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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
AGERA ENERGY LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-23802 (RDD)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF FILING OF MODIFIED SECOND  
AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION OF  
AGERA ENERGY LLC, ET AL., DATED JUNE 16, 2020**

**PLEASE TAKE NOTICE** that on April 1, 2020, Agera Energy LLC and the above-captioned debtors, as debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases filed the *Joint Chapter 11 Plan of Liquidation of Agera Energy LLC*, et al. [Docket No. 594] and the *Disclosure Statement for Joint Chapter 11 Plan of Liquidation of Agera Energy LLC*, et al. [Docket No. 595] in the United States Bankruptcy Court for the Southern District of New York.

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Agera Energy LLC (8122); Agera Holdings, LLC (3335); energy.me midwest llc (9484); Aequitas Energy, Inc. (7988); Utility Recovery LLC (4351); and Agera Solutions LLC (8749). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 555 Pleasantville Road, S-107, Briarcliff Manor, NY 10510.

**PLEASE TAKE FURTHER NOTICE** that on May 4, 2020, the Debtors filed the *First Amended Joint Chapter 11 Plan of Liquidation of Agera Energy LLC*, et al. [Docket No. 666] and the *First Amended Disclosure Statement for First Amended Joint Chapter 11 Plan of Liquidation of Agera Energy LLC*, et al. [Docket No. 667].

**PLEASE TAKE FURTHER NOTICE** that on May 9, 2020, the Debtors filed the *Second Amended Joint Chapter 11 Plan of Liquidation of Agera Energy LLC*, et al. [Docket No. 677] the (“Solicitation Plan”) and the *Second Amended Disclosure Statement for Second Amended Joint Chapter 11 Plan of Liquidation of Agera Energy LLC*, et al. [Docket No. 678].

**PLEASE TAKE FURTHER NOTICE** that on June 9, 2020, the Debtors filed the *Modified Second Amended Joint Chapter 11 Plan of Liquidation of Agera Energy LLC*, et al., dated June 9, 2020 [Docket No. 757] (the “June 9 Plan”), reflecting certain modifications (the “Modifications”) to the Solicitation Plan.

**PLEASE TAKE FURTHER NOTICE** that on June 12, 2020, the Debtors filed a further *Modified Second Amended Joint Chapter 11 Plan of Liquidation of Agera Energy LLC*, et al. [Docket No. 768] (the “June 12 Plan”), reflecting Modifications to the June 9 Plan.

**PLEASE TAKE FURTHER NOTICE** that on June 16, 2020, the Debtors filed a further *Modified Second Amended Joint Chapter 11 Plan of Liquidation of Agera Energy LLC*, et al. [Docket No. 774] (the “June 16 Plan”), reflecting Modifications to the June 12 Plan.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit A** is a redline comparison of the June 16 Plan against the June 12 Plan.

**PLEASE TAKE FURTHER NOTICE** that the Debtors believe that the Modifications neither require additional disclosure under Bankruptcy Code section 1125 nor resolicitation of

votes under Bankruptcy Code section 1126, nor do they require that holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Solicitation Plan.

**PLEASE TAKE FURTHER NOTICE** that, except as expressly amended by the Modifications, all other provisions of the Solicitation Plan remain unaffected.

Dated: June 16, 2020  
New York, New York

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**Exhibit A**

Redline Comparison of June 16 Plan Against June 12 Plan

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

AGERA ENERGY LLC, *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)

) Case No. 19-23802 (RDD)  
)

) (Jointly Administered)  
)

**MODIFIED SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION OF  
AGERA ENERGY LLC, *ET AL.***

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Dated: June ~~12~~16, 2020

New York, New York

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Agera Energy LLC (8122); Agera Holdings, LLC (3335); energy.me midwest llc (9484); Aequis Energy, Inc. (7988); Utility Recovery LLC (4351); and Agera Solutions LLC (8749). The location of the Debtors' corporate headquarters and the service address for all Debtors is 555 Pleasantville Road, S-107, Briarcliff Manor, NY 10510.

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## **INTRODUCTION**

Agera Energy LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”), propose this chapter 11 plan (this “Plan”) under Bankruptcy Code section 1121.

### **ARTICLE 1 - DEFINITIONS AND RULES OF INTERPRETATION**

#### **A. Definitions**

The following terms, when used in this Plan, or any subsequent amendments or modifications thereof, have the respective meanings hereinafter set forth and shall be equally applicable to the singular and plural of terms defined.

**1.1** “Administrative Expense Claim” means a Claim, other than a DIP Financing Claim or a Professional Fee Claim, entitled to priority under Bankruptcy Code section 503(b), 507(a)(2), or 507(b), including, without limitation, BP’s professional fees (to the extent not satisfied as DIP Financing Claims).

**1.2** “Affiliate” has the meaning assigned to such term in Bankruptcy Code section 101(2).

**1.3** “Agera Opco Entities” means Agera Energy LLC, energy.me midwest llc, and Aequis Energy, Inc.

**1.4** “Allowed” means, with respect to a Claim against or Interest in the Debtors, (i) proof of which was originally filed within the applicable period of limitation fixed by the Bankruptcy Court in accordance with Rule 3003(c)(3) of the Bankruptcy Rules and any Final Order, (ii) if no proof of Claim or Interest has been timely filed, which has been or hereafter is listed by the Debtors in their Schedules as liquidated in an amount and not Disputed or contingent, as to which no objection to the allowance thereof has been interposed within the applicable period of limitation fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, a Final Order, or the Claims Objection Bar Date, but only to the extent applicable, or as to which an objection has been interposed and such Claim or Interest has been allowed in whole or in part by a Final Order, or (iii) a Claim or Interest that is allowed by Final Order; *provided, however*, that (a) Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed Claims” hereunder unless otherwise specified herein or by order of the Bankruptcy Court, (b) “Allowed Claim” does not include interest, penalties, or late charges arising from or relating to the period from and after the Petition Date, and (c) “Allowed Claim” does not include any Claim subject to disallowance under Bankruptcy Code section 502(d).

**1.5** “Approved Budget” has the meaning assigned to such term in the Final DIP Order.

**1.6** “Assets” means all property of the Estates, including, without limitation, all property and other interests identified in Bankruptcy Code section 541(a) wherever located and whether acquired prior to or after the Petition Date, including Cash, furniture, fixtures, equipment, artwork, intellectual property, Causes of Action, together with the proceeds and products, replacements, and accessions thereof, including, without limitation, the Briarcliff Membership Interests and Posted Collateral.

**1.7** “Avoidance Action” means any Cause of Action to avoid or recover a transfer of property of the Estates or an interest of the Debtors in property, including, without limitation, actions arising under Bankruptcy Code sections 542, 543, 544, 545, 547, 548, 549, 550, 551, 553(b), or 724(a) and any other applicable federal, state, or common law.

**1.8** “Ballot” means the form distributed to the holder of an impaired Claim on which it is to be indicated whether such holder accepts or rejects the Plan.

**1.9** “Bankruptcy Cases” means the voluntary cases commenced under chapter 11 of the Bankruptcy Code on the Petition Date, jointly administered under case number 19-23802 (RDD) in the United States Bankruptcy Court for the Southern District of New York.

**1.10** “Bankruptcy Code” means title 11 of the United States Code.

**1.11** “Bankruptcy Court” or “Court” means the United States Bankruptcy Court for the Southern District of New York.

**1.12** “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as promulgated by the Supreme Court of the United States, as amended, and any Local Rules of the Bankruptcy Court, as amended, in effect and applicable to the Bankruptcy Cases.

**1.13** “Bar Date” means December 23, 2019 at 5:00 p.m. (prevailing Eastern Time), the date established by the Bankruptcy Court as the deadline to file proofs of Claim or, with respect to Governmental Units, April 1, 2020 at 5:00 p.m., as applicable, unless the Bankruptcy Court has set a different date by which a specific Creditor must file a proof of Claim, in which case it means, for such specific Creditor, such different date set by the Court.

**1.14** “BP” means BP Energy Company.

**1.15** “BP Deficiency Claim” means any Deficiency Claim related to the Prepetition BP Secured Claim, less any collections on Guaranties net of the Guarantee Proceeds paid to the Liquidation Trust.

**1.16** “BP Subordinated Claim” means \$16,698,538.95.

**1.17** “Briarcliff” means the real property of Briarcliff Property Group, LLC, located at 555 Pleasantville Road, S-107, Briarcliff Manor, NY 10510.

**1.18** “Briarcliff Membership Interests” means Agera Energy LLC’s 100% membership interests in Briarcliff Property Group, LLC.

**1.19** “Business Day” means any day other than a Saturday, Sunday, or a “legal holiday,” as such term is defined in Bankruptcy Rule 9006(a).

**1.20** “Cash” means legal tender of the United States of America.

**1.21** “Causes of Action” means any and all Claims, rights, actions, chose in action, suits, causes of action, liens, judgments, and damages belonging to the Debtors or their Estates and any and all liabilities, obligations, covenants, undertakings, and debts owing to the Estates, of whatever nature and whenever arising, whether known or unknown, in law, equity, or otherwise, including, without limitation, actions arising under Bankruptcy Code sections 541 and 542 and any other applicable federal, state, or common law.

**1.22** “CBLIC” means Colorado Bankers Life Insurance Company. For the avoidance of doubt, “CBLIC” does not include Eli Global LLC, Greg Lindberg, Global Health Technology Group, LLC, or any of such entities’ affiliates (other than Colorado Bankers Life Insurance Company), officers, directors, shareholders, equity owners, managers, funds, members, employees, partners, investment advisors, agents, representatives, principals, consultants, attorneys, professional advisors, heirs, executors, successors, or assigns.

~~**1.23** “CBLIC Intercreditor Agreement” means that certain Second Amended and Restated Intercreditor Agreement by and among BP, CBLIC, the Subordinate Lienholders, and certain of the Debtors, dated February 9, 2018.~~

~~**1.24** “CBLIC Settlement Payment” has the meaning assigned to such term in Section 4.5.~~

**1.23** ~~**1.25**~~ “Claim” has the meaning assigned to such term in Bankruptcy Code section 101(5).

**1.24** ~~**1.26**~~ “Claims Agent” means Stretto, which was appointed by the Bankruptcy Court to receive, maintain, docket, and otherwise administer the proofs of Claim filed in the Bankruptcy Cases.

**1.25** ~~**1.27**~~ “Claims Objection Bar Date” means, unless otherwise extended by Order of the Court, the first Business Day that is 120 days after the Effective Date.

**1.26** ~~**1.28**~~ “Class” means a category of Claims or Interests described in ARTICLE 3.

**1.27** ~~**1.29**~~ “Confirmation Amount” means all Cash, which shall be funded from the Effective Date Cash, that is necessary to pay or reserve for Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Non-Tax Priority Claims, Professional Fee

Claims, Allowed Other Secured Claims, the GUC Budget Excess, and the Initial Liquidation Trust Funding, but shall not include any such amounts previously paid pursuant to the Approved Budget.

1.28 ~~1.30~~ “Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket.

1.29 ~~1.31~~ “Confirmation Fund” means the segregated account established under Section 5.5(b).

1.30 ~~1.32~~ “Confirmation Order” means the order of the Bankruptcy Court confirming this Plan pursuant to Bankruptcy Code section 1129, as the Plan may be amended by its terms and consistent with applicable law, and any findings of fact and conclusions of law contained in the Confirmation Order or a separate document entered substantially contemporaneously therewith, in form and substance reasonably satisfactory to the Debtors, BP, and the Committee.

1.31 ~~1.33~~ “Creditor” means any Person holding a Claim against the Debtors or, pursuant to Bankruptcy Code section 102(2), against property of the Debtors, that arose or is deemed to have arisen on or prior to the Petition Date, including, without limitation, a Claim against the Debtors of the kind specified in Bankruptcy Code sections 502(g), 502(h), or 502(i).

1.32 ~~1.34~~ “Creditors’ Committee” or “Committee” means the official committee of unsecured creditors appointed by the U.S. Trustee to represent the interests of unsecured creditors in the Bankruptcy Cases.

1.33 ~~1.35~~ “D&O Policies” means all primary and excess insurance policies that provide coverage for liability related to the actions or omissions of the Debtors’ directors and officers, and, if applicable, “tail” or “runoff” coverage for such policies.

1.34 ~~1.36~~ “Debtors” means Agera Energy LLC and its debtor affiliates, as debtors and debtors in possession in the Bankruptcy Cases.

1.35 ~~1.37~~ “Debtor Release” means the collective releases by the Debtors under Section 8.6.

1.36 ~~1.38~~ “Deficiency Claim” means that portion of any Allowed Claim held by a Secured Creditor that exceeds the value of the Assets securing such Allowed Claim.

1.37 ~~1.39~~ “DIP Financing Claim” means a Claim for an accrued and outstanding amount under the postpetition financing approved by the Final DIP Order.

1.38 ~~1.40~~ “Disallowed” means, when referring to a Claim (including a Scheduled Claim) or Interest, or any portion of a Claim or Interest, which has been disallowed or expunged by a Final Order.

1.39 ~~1.41~~ “Disclosure Statement” means the disclosure statement for the Plan and all exhibits annexed thereto or otherwise filed in connection therewith, approved by the Bankruptcy Court under Bankruptcy Code section 1125.

1.40 ~~1.42~~ “Disclosure Statement Order” means the Final Order approving the Disclosure Statement under Bankruptcy Code section 1125.

1.41 ~~1.43~~ “Disputed” means, with respect to a Claim against or Interest in the Debtors, the extent to which the allowance of such Claim or Interest is the subject of a timely objection, complaint, or request for estimation in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Confirmation Order, or is otherwise not yet Allowed or is disputed in accordance with applicable law, which objection, request for estimation, or dispute has not been withdrawn with prejudice or determined by a Final Order.

1.42 ~~1.44~~ “Disputed Confirmation Reserve” means the segregated account established under Section 5.5(c).

1.43 ~~1.45~~ “Disputed GUC Fund” means the segregated account established under Section 5.5(e).

1.44 ~~1.46~~ “Distribution” means any distribution made under the Plan.

1.45 ~~1.47~~ “Distribution Date” means any date on which a Distribution is made or to be made to holders of Allowed Claims under this Plan.

1.46 ~~1.48~~ “Effective Date” means the first Business Day after the conditions to effectiveness of the Plan set forth in Section 7.2 have been satisfied or waived.

1.47 ~~1.49~~ “Effective Date Cash” means all Cash held by or on behalf of the Debtors as of the Effective Date.

1.48 ~~1.50~~ “Encumbrances” means, collectively, any and all security interests, liens, pledges, Claims, levies, charges, escrows, encumbrances, options, rights of first refusal, transfer restrictions, conditional sale contracts, title retention contracts, mortgages, hypothecations, indentures, security agreements or other agreements, arrangements, contracts, commitments, understandings or obligations of any kind whatsoever, whether written or oral.

1.49 ~~1.51~~ “Entity” has the meaning assigned to such term in Bankruptcy Code section 101(15).

1.50 ~~1.52~~ “Estate” or “Estates” means, individually or collectively, the estate or estates of the Debtors created under Bankruptcy Code section 541.

1.51 ~~1.53~~ “Fee Application Deadline” has the meaning assigned to such term in Section 5.21.

1.52 ~~1.54~~ “Final Administrative Expense Claims Bar Date” has the meaning assigned to such term in Section 5.20.

1.53 ~~1.55~~ “Final DIP Order” means the Final Order entered by the Bankruptcy Court on November 12, 2019 authorizing the Debtors’ use of cash collateral and entry into postpetition financing [Docket No. 221].

1.54 ~~1.56~~ “Final Order” means an order or judgment of the Bankruptcy Court as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending; *provided, however*, that if an appeal, writ of certiorari, reargument, or rehearing thereof has been filed or sought, such order shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied or reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired; *provided, further*, that the possibility that a motion under Bankruptcy Code section 502(j), Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be but has not then been filed with respect to such order, shall not cause such order not to be a Final Order.

1.55 ~~1.57~~ “First Administrative Expense Claims Bar Date” means December 23, 2019.

1.56 ~~1.58~~ “Forbearance Agreement” means that certain Forbearance Agreement and Limited Waiver, dated November 20, 2018, between the Agera Opco Entities, BP, and Agera Holdings, LLC.

1.57 ~~1.59~~ “General Unsecured Claim” means any Unsecured Claim against any Debtor that is not an Administrative Expense Claim, Professional Fee Claim, Priority Tax Claim, Non-Tax Priority Claim or Intercompany Claim.

1.58 ~~1.60~~ “General Unsecured Creditor Interest” means an interest in the Liquidation Trust allocable to the respective holders of Allowed General Unsecured Claims (and any successors, transferees, or assigns thereof) under the Plan.

1.59 ~~1.61~~ “Governmental Unit” has the meaning assigned to such term in Bankruptcy Code section 101(27).

1.60 ~~1.62~~ “Guarantee Proceeds” has the meaning assigned to such term in Section 4.2.

1.61 ~~1.63~~ “Guaranties” means the guaranties in favor of BP made by Greg Lindberg and Global Health Technology Group, LLC that guaranteed the obligations of the Agera Opco Entities and Agera Holdings, LLC under the Senior Lien Supply Agreement and the Forbearance Agreement.



1.62 ~~1.64~~ “GUC Budget Excess” means an amount, as of the Effective Date, after accounting for any amounts reserved for Claims, equal to fifty percent (50%) of any unused portion of the following line items set forth in the Approved Budget: (i) the REC Budget Line Item; (ii) the Sales Tax Budget Line Item; and (iii) Priority Claims Budget Line Item; and after the Effective Date, inclusive of fifty percent (50%) of any funds reserved from the foregoing budget line items in the event they are not used to pay Claims *provided, however*, that the GUC Budget Excess shall not exceed \$1.5 million in the aggregate.

1.63 ~~1.65~~ “Initial Liquidation Trust Funding” means \$2.25 million, to be funded from the Effective Date Cash.

1.64 ~~1.66~~ “Insurance Policies” means all insurance policies of the Debtors, including any D&O Policy.

1.65 ~~1.67~~ “Interests” means any and all prepetition equity interests in any Debtor arising from any form of equity securities, as defined in Bankruptcy Code section 101(16), including, without limitation, any prepetition common and preferred stock or member interests issued and outstanding, and all options, warrants, and other rights relating thereto.

1.66 ~~1.68~~ “Intercompany Claims” means the Claims of a Debtor against any other Debtor, and shall exclude any claims of a Debtor against a non-Debtor Affiliate or a non-Debtor subsidiary.

1.67 ~~1.69~~ “Interim DIP Order” means the interim order entered by the Bankruptcy Court on October 8, 2019 authorizing the Debtors’ use of cash collateral and entry into postpetition financing [Docket No. 47].

1.68 ~~1.70~~ “IRS” means the Internal Revenue Service of the United States of America.

~~1.71 — “Junior Loan Agreement” means that certain Junior Loan and Security Agreement, dated February 15, 2018, between Agera Energy LLC and CBLIC.~~

1.69 ~~1.72~~ “Liquidation Trust” means the trust established under Section 5.4 and the Liquidation Trust Agreement.

1.70 ~~1.73~~ “Liquidation Trust Agreement” means the agreement between the Debtors and the Liquidation Trustee that, among other things, establishes the Liquidation Trust and describes the powers, duties, and responsibilities of the Liquidation Trustee, substantially in the form included in the Plan Supplement, which form shall be approved in writing by the Committee.

1.71 ~~1.74~~ “Liquidation Trust Assets” means (a) the Avoidance Actions (other than causes of action arising under Bankruptcy Code section 549 related to the Prepetition Collateral and any related action under Bankruptcy Code section 550); (b) the Debtors’ commercial tort claims; (c) the Debtors’ claims or Causes of Action against the Debtors’ directors and officers; (d)

claims or Causes of Action that may be satisfied by Insurance Policies, each only to the extent such Claims or Causes of Action do not constitute Prepetition Collateral; (e) the Initial Liquidation Trust Funding; (f) the Briarcliff Membership Interests; (g) the GUC Budget Excess; (h) the right to receive Guarantee Proceeds; (i) any assets of the Debtors not otherwise distributed or administered under the Plan; and (j) any proceeds or product of the foregoing. Notwithstanding the foregoing, the Liquidation Trust Assets shall not include (i) the Posted Collateral and any Causes of Action relating thereto, (ii) except as otherwise provided herein, the Prepetition Collateral, or (iii) any Cause of Action against the Released Parties.

1.72 ~~1.75~~ “Liquidation Trust Expense Fund” means a reserve established under Section 5.5(f).

1.73 ~~1.76~~ “Liquidation Trust Expenses” means all fees and expenses of the Liquidation Trust, the Liquidation Trustee, and any Professionals retained by the Liquidation Trustee or Liquidation Trust after the Effective Date; *provided, however*, that any fees or expenses (including legal) incurred by the Liquidation Trustee in connection with collecting or recovering any Prepetition Collateral, including the Posted Collateral, shall not be considered Liquidation Trust Expenses.

1.74 ~~1.77~~ “Liquidation Trustee” means the Person designated by the Committee, after consultation with BP, in the Plan Supplement and approved by the Bankruptcy Court pursuant to the Confirmation Order to serve as the liquidation trustee.

1.75 ~~1.78~~ “Non-Tax Priority Claim” means a Claim, other than an Administrative Expense Claim, Professional Fee Claim, DIP Financing Claim, or Priority Tax Claim, that is entitled to priority in payment under Bankruptcy Code section 507(a)(1), (2) (3), (4), (5), (6), (7), or (9).

1.76 ~~1.79~~ “Other Secured Claim” means any Secured Claim (other than the Prepetition BP Secured Claim and the Prepetition CBLIC ~~Claims~~Claim) under Bankruptcy Code section 506.

1.77 ~~1.80~~ “Permissible Investments” means (i) investments in (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, (c) an open-ended management investment company, registered under the Investment Company Act of 1940 that is regulated as a “money market fund” pursuant to Rule 2a-7 under the Investment Company Act of 1940, provided that the fund: (1) invests exclusively in United States Treasury bills and United States Treasury Notes owned directly or through repurchase agreements; (2) has received the highest money market fund rating from a nationally recognized statistical rating organization, such as Standard & Poor’s or Moody’s; (3) has agreed to redeem funds shares in cash, with payment being made no later than the business day following a redemption request by a shareholder, except in the event of an unscheduled closing of the Federal Reserve Banks or the New York Stock Exchange; and (4) has adopted a policy that it will notify its shareholders 60 days prior to any

change in its policy (A) to invest exclusively in Treasury Securities as described in (1) above or (B) to redeem fund shares in cash no later than the business day following a redemption request by the shareholder, with limited exceptions for unscheduled closings of Federal Reserve Banks or the New York Stock Exchange; or (ii) deposits in demand deposits at any bank or trust company, provided, however, that the scope of any of the foregoing shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the IRS, whether set forth in IRS rulings, other IRS pronouncements, or otherwise

1.78 ~~1.81~~ “Person” means any individual, corporation, partnership, association, joint venture, limited liability company, limited liability partnership, estate, trust, receiver, trustee, unincorporated organization or Governmental Unit or subdivision thereof or other Entity.

1.79 ~~1.82~~ “Petition Date” means October 4, 2019, the date on which the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

1.80 ~~1.83~~ “Plan” means this Second Amended Joint Chapter 11 Plan of Liquidation of Agera Energy LLC, *et al.*, and any exhibits annexed hereto or otherwise filed in connection with the Plan, and any documents delivered in connection herewith, as the same may be amended or modified from time to time by any duly authorized and permitted amendment or modification.

1.81 ~~1.84~~ “Plan Supplement” means the schedules and exhibits to the Plan to be filed with the Bankruptcy Court at least ten (10) calendar days prior to the Voting Deadline (as defined in the Disclosure Statement).

1.82 ~~1.85~~ “Posted Collateral” means collateral, including, without limitation, cash, surety bonds, and letters of credit, posted by any Debtor (or by BP on behalf of any Debtor) to any independent system operator, regional transmission operator, utility, local distribution company, state public utility commission or similar governing body, or other beneficiary.

1.83 ~~1.86~~ “Postpetition Collateral” means the collateral securing the DIP Financing Claims.

1.84 ~~1.87~~ “Postpetition Secured Party” means BP.

1.85 ~~1.88~~ “Prepetition BP Secured Claim” means all obligations owed by the Debtors to BP under the Prepetition BP Secured Loan Documents.

1.86 ~~1.89~~ “Prepetition BP Secured Loan Documents” means (i) that certain Preferred Supplier Agreement dated effective as of October 2, 2015 (as amended, modified, or supplemented) and (ii) each of the Related Agreements (as defined in the Preferred Supplier Agreement), including that certain ISDA 2002 Master Agreement, dated as of May 5, 2015, together with the Schedule, Credit Support Annex, Power Annex, the Gas Annex and the

Renewable Energy Certificates Annex thereto and all confirmations thereunder, as amended by that certain Amendment dated as of October 2, 2015, and as further amended, modified or supplemented, among the Agera Opco Entities and BP.

1.87 ~~1.90~~ “Prepetition CBLIC Claims Claim” means all obligations owed by Agera Energy LLC to CBLIC under ~~the~~that certain Junior Loan and Security Agreement dated February 15, 2018, between Agera Energy LLC and CBLIC.

1.88 ~~1.91~~ “Prepetition Collateral” means the collateral securing the Prepetition BP Secured Claim, including, without limitation, the Posted Collateral.

1.89 ~~1.92~~ “Priority Claims Budget Line Item” means the \$750,000 line item for payment of ~~the CBLIC Settlement Payment and~~ priority claims set forth in the Approved Budget.

1.90 ~~1.93~~ “Priority Tax Claim” means a Claim or a portion of a Claim of a Governmental Unit against any Debtor that is entitled to priority in payment under Bankruptcy Code sections 502(i) and 507(a)(8).

1.91 ~~1.94~~ “Professional Fee Claim” means any Claim of a Professional for compensation, indemnification, or reimbursement of costs and expenses incurred on or before the Effective Date pursuant to Bankruptcy Codes sections 327, 328, 330, 331, 503(b), or 1103(a), plus any fees and expenses related to the final fee application of a Professional.

1.92 ~~1.95~~ “Professional Fee Escrow Account” means the account to be established on the Effective Date and funded with the Effective Date Cash, in an amount equal to the sum of the Professional Fee Claims not yet satisfied as of the Effective Date.

1.93 ~~1.96~~ “Professionals” means all Persons retained by order of the Bankruptcy Court in connection with the Bankruptcy Cases, pursuant to Bankruptcy Code sections 327, 328, or 1103, excluding any ordinary course professionals.

1.94 ~~1.97~~ “Pro Rata” means, in connection with a particular Allowed Claim and in connection with any Distribution, the ratio between the amount of such Allowed Claim and the aggregate amount of all Allowed Claims in such Class or Classes entitled to such Distribution.

1.95 ~~1.98~~ “REC Budget Line Item” means the \$1,623,686 line item for payment of renewable energy certificates or alternative compliance payments set forth in the Approved Budget.

1.96 ~~1.99~~ “Record Date” has the meaning assigned to such term in Section 9.9.

1.97 ~~1.100~~ “Released Parties” means collectively and in each case in their capacity as such: (a) the Debtors; (b) the Committee and its members; (c) BP; and (d) with respect to each of the foregoing entities in clauses (a) through (c), such entities’ officers, directors, and managers, funds, affiliates, employees, partners, managers, investment advisors, agents, representatives,

principals, consultants, attorneys, professional advisors, heirs, executors, successors and assigns (each in their capacity as such), including, without limitation, (i) Todd Sandford, Mark Linzenbold, Stephen Gray, and Raima Jamal, (ii) McDermott Will & Emery LLP, (iii) GlassRatner Capital & Advisory Group LLC, (iv) Miller Buckfire & Co., LLC and Stifel, Nicolaus & Co., Inc., (v) Kilpatrick Townsend & Stockton LLP, (vi) Dundon Advisers LLC, and (vii) Bankruptcy Management Solutions, Inc. (d/b/a Stretto); *provided, however for avoidance of doubt*, that the “Released Parties” do not include Eli Global LLC, Greg Lindberg, CBLIC ~~(except as provided in Section 8.6)~~, or Global Health Technology Group, LLC, any of their affiliates except the Debtors, or any of the Debtors’ former directors or officers not identified in this Section ~~1.100~~1.97.

1.98 ~~1.101~~ “Releasing Parties” means collectively and in each case in their capacity as such: (a) the Released Parties identified in subsection (a)–(c) of the definition of “Released Parties” and those Released Parties identified in subsection (d) of the definition of “Released Parties” on behalf of whom the parties identified in subsections (a)–(c) of the definition of “Released Parties” have the authority, including under any agreement or applicable non-bankruptcy law, to grant the Third Party Release set forth in Section 8.7; (b) the holders of all Claims and Interests who vote to accept the Plan; (c) the holders of all Claims or Interests who are deemed to accept the Plan and do not timely submit a duly-completed opt-out form in accordance with the Disclosure Statement Order; (d) the holders of all Claims or Interests whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan; (e) all other holders of Claims and Interests (including holders of Claims and Interests who are deemed to reject the Plan) who do not timely submit a duly completed opt-out form in accordance with the Disclosure Statement Order; (f) Briarcliff Property Group, LLC; ~~(g) CBLIC~~; and ~~(h)g~~ with respect to each of the foregoing entities, such entities’ current directors, current officers, funds, affiliates, members, employees, partners, managers, investment advisors, agents, representatives, principals, consultants, attorneys, professional advisors, heirs, executors, successors and assigns (each in their capacity as such); *provided, however*, that notwithstanding the foregoing, the term “Releasing Parties” does not include (x) the holders of Claims and Interests who submitted a ballot to the Voting Agent but failed to indicate whether such holder votes to accept or reject the Plan, or (y) holders of Claims or Interests who vote to reject the Plan but do not opt out of granting the releases set forth herein-; *provided, further, that the term “Releasing Parties” does not include CBLIC, except that CBLIC shall be deemed a Releasing Party solely with respect to the following Released Parties: (1) Todd Sandford, Mark Linzenbold, Stephen Gray, and Raima Jamal, (2) McDermott Will & Emery LLP, (3) GlassRatner Capital & Advisory Group LLC, (4) Miller Buckfire & Co., LLC and Stifel, Nicolaus & Co., Inc., (5) Kilpatrick Townsend & Stockton LLP, (6) Dundon Advisers LLC, and (7) Bankruptcy Management Solutions, Inc. (d/b/a Stretto).*

1.99 ~~1.102~~ “Sales Tax Budget Line Item” means the \$2.5 million line item for payment of sales taxes set forth in the Approved Budget.

1.100 ~~1.103~~ “Scheduled Claim” means a Claim that is listed in the Debtors’ Schedules.

1.101 ~~1.104~~ “Schedules” means the schedules of Assets and liabilities, schedules of executory contracts and unexpired leases, statements of financial affairs, and other schedules and statements filed by the Debtors pursuant to Bankruptcy Rule 1007, and any amendments thereto.

1.102 ~~1.105~~ “Secured Claim” means a Claim secured by a “lien,” as that term is defined in Bankruptcy Code section 101(37), including, but not limited to, a judicial lien as that term is defined in Bankruptcy Code section 101(36), against any property of the Estates, but only to the extent of the value, as determined by the Bankruptcy Court pursuant to Bankruptcy Code section 506(a) and Bankruptcy Rule 3012 or as otherwise agreed to, of such Creditor’s interest in any Debtor’s interest in such property.

1.103 ~~1.106~~ “Secured Creditor” means the holder of a Secured Claim.

1.104 ~~1.107~~ “Senior Lien Secured Party” means BP.

1.105 ~~1.108~~ “Senior Lien Supply Agreement” means that certain Preferred Supplier Agreement between the Agera Opco Entities and BP, dated October 2, 2015 (as amended on May 15, 2017 and February 9, 2018).

1.106 ~~1.109~~ “Stamp or Similar Tax” means any stamp tax, recording tax, conveyance fee, intangible or similar tax, mortgage tax, personal or real property tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes or fees imposed or assessed by any Governmental Unit.

1.107 ~~1.110~~ “Standing Motion” means the *Motion of the Official Committee of Unsecured Creditors for Order Granting (I) Leave, Standing, and Authority to Commence Prosecute Certain Claims on Behalf of the Debtors’ Estates Against BP Energy Company and (II) Related Relief* [Docket No. 518].

1.108 ~~1.111~~ “Statutory Fees” means all fees for which the Debtors are obligated pursuant to 28 U.S.C. § 1930(a)(6), together with interest, if any, pursuant to 31 U.S.C. § 3717.

1.109 ~~1.112~~ “Subordinate Lienholders” means AGH Parent LLC and Bainbridge Energy Finance Fund LLC.

1.110 ~~1.113~~ “Subordinated Creditor Fund” means the segregated account established under Section 5.5(g).

1.111 ~~1.114~~ “Tax Information” has the meaning assigned to such term in Section 9.14(a).

1.112 ~~1.115~~ “Tax Information Request” has the meaning assigned to such term in Section 9.14(b).



1.113 ~~1.116~~ “Third Party Release” has the meaning assigned to such term in Section 8.7.

1.114 ~~1.117~~ “U.S. Trustee” means the Office of the United States Trustee for Region 2.

1.115 ~~1.118~~ “Unclaimed Distribution” means any Distribution that remains unclaimed after ninety (90) days following any Distribution Date, including, without limitation, (i) checks (and the funds represented thereby) that have been returned as undeliverable without a proper forwarding address, (ii) funds representing checks that have not been paid, and (iii) checks (and the funds represented thereby) that were not mailed or delivered because of the absence of a valid address.

1.116 ~~1.119~~ “Unsecured Claim” means any Claim that is not secured by an offset or “lien,” as that term is defined in Bankruptcy Code section 101(37), including, but not limited to, a “judicial lien,” as that term is defined in Bankruptcy Code section 101(36), against any property of the Estates, but only to the extent of the “value,” as determined by the Bankruptcy Court pursuant to Bankruptcy Code section 506(a) and Bankruptcy Rule 3012, or as otherwise agreed to, of such Creditor’s interest in the Debtor’s interest in such property.

1.117 ~~1.120~~ “Voting Agent” means Stretto, which has been retained by the Debtors to perform certain solicitation and other administrative services.

## **B. Rules of Interpretation**

For purposes of the Plan: (a) where appropriate in the relevant context, each term, whether stated in the singular or the plural, includes both the singular and the plural; (b) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) unless otherwise provided in this Plan, any reference in this Plan to an existing document or appendix filed or to be filed means such document or appendix, as it may have been or may be amended, modified, or supplemented under this Plan; (d) unless otherwise specified herein, any reference to a Person as a holder of a Claim or Interest includes that Person’s successors, assigns, and affiliates; (e) unless otherwise specified, all references in this Plan to Sections and Articles are references to Sections and Articles of or to the Plan; (f) the words “herein,” “hereto,” and “hereof” refer to this Plan in its entirety rather than to a particular portion of the Plan; and (g) the rules of construction set forth in Bankruptcy Code section 102 will apply to the Plan. To the extent that this Plan is inconsistent with the Disclosure Statement, unless such document specifically states otherwise, the provisions of the Plan shall control.

**ARTICLE 2 - PAYMENT OF CLAIMS AND FEES NOT REQUIRED TO BE  
CLASSIFIED**

**2.1 Claims and Fees Not Classified.**

No Classes are designated for DIP Financing Claims, Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, Non-Tax Priority Claims, Intercompany Claims, or Statutory Fees.

**2.2 DIP Financing Claims.**

The DIP Financing Claims are Allowed in full. All Allowed DIP Financing Claims shall be paid in full, in Cash on the Effective Date or as soon thereafter as reasonably practicable.

**2.3 Administrative Expense Claims.**

All Allowed Administrative Expense Claims shall be paid in full, in Cash in such amounts as may be Allowed by the Bankruptcy Court (a) as soon as practicable following the later of the Effective Date or the date upon which the Court enters a Final Order allowing any such Administrative Expense Claim, (b) as otherwise provided in the Bankruptcy Code or approved by the Bankruptcy Court, or (c) as agreed by the holder of any such Administrative Expense Claim. If any Disputed Administrative Expense Claim exists on the Effective Date, then the Liquidation Trustee shall hold and maintain Cash in the Disputed Confirmation Reserve in an amount equal to all outstanding Disputed Administrative Expense Claims until such dispute is resolved consensually or by Final Order. Except with respect to the GUC Budget Excess, any amounts reserved to satisfy Administrative Expense Claims that are ultimately Disallowed shall remain collateral securing the Prepetition BP Secured Claim and shall be distributed to BP on account of the Prepetition BP Secured Claim upon disallowance of such Administrative Expense Claims.

**2.4 Professional Fee Claims**

All Allowed Professional Fee Claims shall be paid in full, in Cash in such amounts as may be Allowed by the Bankruptcy Court (a) as soon as practicable following the later of the Effective Date or the date upon which the Court enters a Final Order allowing any such Professional Fee Claim, (b) as otherwise provided in the Bankruptcy Code or approved by the Bankruptcy Court, or (c) as may be agreed upon between the holder of any such Professional Fee Claim and the Debtors. If any Disputed Professional Fee Claim exists on the Effective Date, then the Liquidation Trustee shall hold and maintain Cash in the Professional Fee Escrow Account in an amount equal to all outstanding Disputed Professional Fee Claims until such dispute is resolved consensually or by Final Order. Except with respect to the GUC Budget Excess, any amounts reserved to satisfy Professional Fee Claims that are ultimately Disallowed shall remain collateral securing the Prepetition BP Secured Claim and shall be distributed to BP on account of the Prepetition BP Secured Claim upon disallowance of such Professional Fee Claims.



## **2.5 Priority Tax Claims.**

Unless otherwise agreed to by the parties, each holder of an Allowed Priority Tax Claim will receive Cash of a total value, as of the Effective Date, equal to the Allowed amount of such Priority Tax Claim either (a) in full on the Effective Date, or (b) in regular installment payments over a period ending not later than five (5) years after the Petition Date, which treatment is not less favorable than that provided to the General Unsecured Creditors, in accordance with Bankruptcy Code section 1129(a)(9)(C); *provided, however*, that all Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business in accordance with the terms thereof. If any Disputed Priority Tax Claim exists on the Distribution Date, then the Liquidation Trustee shall hold and maintain Cash in the Disputed Confirmation Reserve in an amount equal to all outstanding Disputed Priority Tax Claims until such dispute is resolved consensually or by Final Order. Except with respect to the GUC Budget Excess, any amounts reserved to satisfy Priority Tax Claims that are ultimately Disallowed shall remain collateral securing the Prepetition BP Secured Claim and shall be distributed to BP on account of the Prepetition BP Secured Claim upon disallowance of such Priority Tax Claims.

## **2.6 Non-Tax Priority Claims.**

Each holder of an Allowed Non-Tax Priority Claim will receive Cash on the Effective Date of a total value, as of the Effective Date or as otherwise provided in the Bankruptcy Code or approved by the Bankruptcy Court, equal to the full Allowed amount of such Non-Tax Priority Claim, except to the extent that a holder of such claim agrees to different treatment; *provided, however*, that all Allowed Non-Tax Priority Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business in accordance with the terms thereof. If any Disputed Non-Tax Priority Claim exists on the Distribution Date, then the Liquidation Trustee shall hold and maintain Cash in the Disputed Confirmation Reserve in an amount equal to all outstanding Disputed Non-Tax Priority Claims until such dispute is resolved consensually or by Final Order. Except with respect to the GUC Budget Excess, any amounts reserved to satisfy Non-Tax Priority Claims that are ultimately Disallowed shall remain collateral securing the Prepetition BP Secured Claim and shall be distributed to BP on account of the Prepetition BP Secured Claim upon disallowance of such Non-Tax Priority Claims.

## **2.7 Intercompany Claims.**

As a result of substantive consolidation of the Debtors for Distribution purposes under the Plan, as provided in Section 5.2, holders of Intercompany Claims will not receive any Distribution of property under the Plan on account of their Intercompany Claims and, on the Effective Date, the Intercompany Claims will be cancelled.

## **2.8 Statutory Fees.**

On the Effective Date and thereafter as may be required, the Liquidation Trustee shall pay all Statutory Fees when due and payable. The obligations under this Section 2.8 shall remain until

the entry of a final decree closing the Bankruptcy Cases, a Final Order converting the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code, or a Final Order dismissing the Bankruptcy Cases.

### **ARTICLE 3 - CLASSIFICATION OF CLAIMS AND INTERESTS**

#### **3.1 Criterion of Class.**

A Claim is in a particular Class only to the extent that the Claim qualifies within the description of that Class, and is in a different Class or Classes to the extent that the remainder of the Claim qualifies within the description of the different Class or Classes.

#### **3.2 Classification.**

The Plan is premised on the substantive consolidation of the Debtors with respect to the voting and treatment of all Claims and Interests, as provided below. The following summary is for the convenience of all interested parties and is superseded for all purposes by the classification, description, and treatment of Claims and Interests in ARTICLE 4 of the Plan.

#### **3.3 Class Categories.**

The following Classes of Claims and Interests are designated pursuant to and in accordance with Bankruptcy Code section 1123(a)(1), which Classes shall be mutually exclusive:

<b>Class</b>	<b>Class Designation</b>	<b>Status/Voting Rights</b>
Class 1A	Allowed Other Secured Claims	Unimpaired/Deemed to Accept
Class 1B	Allowed Prepetition BP Secured Claim	Impaired/Entitled to Vote
Class 2	Allowed General Unsecured Claims	Impaired/Entitled to Vote
Class 3	Allowed BP Deficiency Claim and Allowed BP Subordinated Claim	Impaired/Entitled to Vote
Class 4	Allowed Prepetition CBLIC <del>Claims</del> <u>Claim</u>	Impaired/Entitled to Vote
Class 5	Interests	Impaired/Deemed to Reject

### **ARTICLE 4 - TREATMENT OF CLASSES OF CLAIMS AND INTERESTS**

The following treatment of and consideration to be received by holders of Allowed Claims and Interests under this Plan shall be in full settlement, release, and discharge of such Allowed Claims and Interests.

#### **4.1 Class 1A (Allowed Other Secured Claims).**

Each holder of an Allowed Other Secured Claim shall receive on the Effective Date (except to the extent that a holder of an Allowed Other Secured Claim agrees to less favorable

treatment): (i) Cash in an amount equal to such Other Secured Claim; (ii) return of the collateral securing such Other Secured Claim; (iii) such other treatment that will render such Other Secured Claim unimpaired under Bankruptcy Code section 1124; or (iv) such other treatment as the Debtors and the applicable holder of an Allowed Other Secured Claim may agree. Any Deficiency Claim that may arise on account of the present lack of collateral or otherwise resulting from the aforesaid treatment shall be included in and treated as a Class 2 Allowed General Unsecured Claim. For the avoidance of doubt, the Subordinate Lienholders and their successors will not have Allowed Claims and their liens, if any, shall be released.

#### **4.2 Class 1B (Allowed Prepetition BP Secured Claim).**

Each holder of an Allowed Prepetition BP Secured Claim shall receive on the Effective Date, or as soon as reasonably practicable thereafter, all of the following, but not including cash in an amount necessary to pay or reserve for the Confirmation Amount: the return of proceeds from the sale of the Prepetition Collateral and any Prepetition Collateral, including, among other things, the Posted Collateral, subject to Other Secured Claims. BP shall be deemed to (i) waive any diminution Claim against the Debtors and their Estates under the Final DIP Order, and (ii) release any lien it holds on (a) Briarcliff that is evidenced by a mortgage or otherwise, as well as any lien on the Briarcliff Membership Interests, and (b) the Liquidation Trust Assets.

The aggregate Allowed amount of the Prepetition BP Secured Claim shall be the sum of (i) \$128,222,666 and (ii) the amount of any draws on Posted Collateral pursuant to the Prepetition BP Secured Loan Documents, *minus* any Adequate Protection Cash Payments (as defined in the Final DIP Order) applied to the Prepetition BP Secured Claim prior to the Effective Date.

In no event shall BP receive Distributions under the Plan that exceed the aggregate Allowed amount of the Prepetition BP Secured Claim unless holders of General Unsecured Claims have been paid in full. If BP receives Distributions under the Plan that exceed the Allowed amount of the Prepetition BP Secured Claim before holders of General Unsecured Claims are paid in full, BP shall remit any such excess amount to the Liquidation Trust, and such amounts shall constitute Liquidation Trust Assets.

BP is pursuing and attempting to collect on the Guaranties. BP shall, upon request in writing by the Liquidation Trustee, provide status updates to the Liquidation Trustee with respect to the pursuit and collection of the Guaranties. Each time BP receives proceeds on account of the Guaranties (the "Guarantee Proceeds"), BP shall pay, without recoupment or offset, 10% of the Guarantee Proceeds, net of any expenses incurred in the enforcement and collection thereof, to the Liquidation Trust no later than fourteen (14) days after BP's receipt of such Guarantee Proceeds. The amount of Guarantee Proceeds transferred by BP to the Liquidation Trust shall constitute Liquidation Trust Assets and shall not exceed \$3 million (the "Maximum Guaranty Proceeds"). If BP determines to cease pursuing enforcement and collection of the Guaranties before the Maximum Guaranty Proceeds are transferred to the Liquidation Trust, BP shall notify the Liquidation Trustee of its intention to do so and, if requested by the Liquidation Trustee, shall cooperate with the Liquidation Trustee to enable it to take over pursuit of the Guaranties. BP may

settle the claims under the Guaranties in its absolute and sole discretion provided that it gives prior notice to the Liquidation Trustee by providing an opportunity for the Liquidation Trustee to consult with BP.

~~Effective as of the Effective Date, CBLIC shall be deemed to provide a full release to BP and its respective property from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, derivative Claims, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date, in law, at equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstance existing or taking place prior to or on the Effective Date arising from or related in any way to the Prepetition CBLIC Claim, the Prepetition BP Secured Claim, the BP Deficiency Claim, the BP Subordinated Claim, the Debtors, the Junior Loan Agreement, the CBLIC Intercreditor Agreement, or any matters arising under or in connection with the same, including those that CBLIC would have been legally entitled to assert or that any holder of a Claim against or Interest in CBLIC or any other Entity could have been legally entitled to assert derivatively or on behalf of CBLIC.~~

#### **4.3 Class 2 (Allowed General Unsecured Claims).**

Each holder of an Allowed General Unsecured Claim shall receive one or more Distributions equal to its Pro Rata share of the General Unsecured Creditor Interests as such Distributions become available as is reasonably practicable in the reasonable discretion of the Liquidation Trustee. The Liquidation Trust, in the Liquidation Trustee's discretion, shall make periodic Distributions of available Cash from the Liquidation Trust Assets to the holders of General Unsecured Creditor Interests at any time after the Effective Date.

#### **4.4 Class 3 (Allowed BP Deficiency Claim and Allowed BP Subordinated Claim).**

Subject to Section 4.5, (i) the BP Deficiency Claim and the BP Subordinated Claim shall be deemed Allowed and subordinated to Class 2 Allowed General Unsecured Claims, and (ii) after all Allowed General Unsecured Claims are paid in full, each holder of an Allowed BP Deficiency Claim and Allowed BP Subordinated Claim shall receive its Pro Rata share of the proceeds of the Subordinated Creditor Fund as such funds become available as is reasonably practicable in the reasonable discretion of the Liquidation Trustee.

#### **4.5 Class 4 (Allowed Prepetition CBLIC ~~Claims~~ Claim).**

~~In full satisfaction~~ CBLIC shall be deemed to have waived the entirety of the Prepetition CBLIC ~~Claims, upon the Effective Date, the Liquidation Trustee shall pay CBLIC Cash in the amount of \$82,500 (the "CBLIC Settlement Payment")~~ Claim, and CBLIC shall not be entitled to any additional ~~claims~~ Claims against or ~~distributions~~ Distributions from the Debtors, the Debtors' ~~estates~~ Estates, or the Liquidation Trust. ~~CBLIC shall be a beneficiary of the Debtor Release as set~~

~~forth in Section 8.6. BP shall not seek to enforce the provisions of the CBLIC Intercreditor Agreement, with respect to the CBLIC Settlement Payment.~~

~~Effective as of the Effective Date, BP shall be deemed to provide a full release to CBLIC and its respective property from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, derivative Claims, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date, in law, at equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstance existing or taking place prior to or on the Effective Date arising from or related in any way to the Prepetition CBLIC Claim, the Prepetition BP Secured Claim, the BP Deficiency Claim, the BP Subordinated Claim, the Debtors, the Junior Loan Agreement, the CBLIC Intercreditor Agreement, or any matters arising under or in connection with the same, including those that BP would have been legally entitled to assert or that any holder of a Claim against or Interest in BP or any other Entity could have been legally entitled to assert derivatively or on behalf of BP.~~

#### **4.6 Class 5 (Interests).**

No holder of an Interest shall be entitled to a Distribution under the Plan on account of such Interest. On the Effective Date, all Interests shall be retired, cancelled, extinguished, and/or discharged.

### **ARTICLE 5 - MEANS OF IMPLEMENTATION OF THE PLAN**

#### **5.1 Joint Chapter 11 Plan.**

The Plan is a joint chapter 11 plan for each Debtor, with the Plan for each Debtor being non-severable and mutually dependent on the Plan for each Debtor.

#### **5.2 Substantive Consolidation of Claims Against Debtors for Plan Purposes Only.**

The Plan is premised on the substantive consolidation of all of the Debtors with respect to the treatment of all Claims and Interests, as provided below. The Plan shall serve as a request by the Debtors, in lieu of a separate motion, to the Bankruptcy Court that it grant substantive consolidation with respect to the treatment of all Claims and Interests as follows. On the Effective Date, (a) all Assets and liabilities of the Debtors will, solely for voting and Distribution purposes, be merged or treated as though they were merged; (b) all guarantees of the Debtors of the obligations of any other Debtor and any joint or several liability of any of the Debtors shall be eliminated; (c) each and every Claim or Interest against any Debtor shall be deemed a single Claim against, and a single obligation of, the Debtors and all Claims filed against more than one Debtor for the same liability shall be deemed one Claim against any obligation of the Debtors; and (d) all transfers, disbursements, and Distributions on account of Claims made by or on behalf of any of

the Debtors' Estates hereunder will be deemed to be made by or on behalf of all of the Debtors' Estates. Holders of Allowed Claims entitled to Distributions under the Plan shall be entitled to their share of Assets available for Distribution to such Claim without regard to which Debtor was originally liable for such Claim. Except as set forth herein, such limited substantive consolidation shall not (other than for purposes related to the Plan) affect the legal and corporate structures of the Debtors.

### **5.3 Plan Funding Mechanism.**

The Plan shall be funded from the Effective Date Cash and any other Assets of the Estates, except as expressly set forth herein.

### **5.4 Formation of the Liquidation Trust.**

On the Effective Date, the Liquidation Trust shall be formed pursuant to the Plan and established and become effective in accordance with the Liquidation Trust Agreement to liquidate the Liquidation Trust Assets, the Prepetition Collateral, and the Postpetition Collateral, and to enable the Liquidation Trustee to distribute same in accordance with the Plan and the Liquidation Trust Agreement. The Liquidation Trust shall be established for the sole purpose of liquidating and distributing the Liquidation Trust Assets, the Prepetition Collateral, and the Postpetition Collateral in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. On the Effective Date, the Debtors shall transfer all of the Liquidation Trust Assets, the Prepetition Collateral, and the Postpetition Collateral to the Liquidation Trust, subject only to the liens of Secured Creditors (as may be modified in the Plan), and otherwise free and clear of liens, Claims, and Interests. On or before the Effective Date, the Liquidation Trust Agreement shall be executed and, upon the Effective Date, shall become effective without further action by any party.

The terms of the Liquidation Trust Agreement shall control as to all matters applicable to the Liquidation Trust. To the extent there is any conflict between the Liquidation Trust Agreement and the Plan, the Plan shall govern.

### **5.5 Establishment of Reserves and Escrow Accounts.**

(a) At least three (3) days prior to the Effective Date, the Debtors shall file with the Bankruptcy Court a notice that reflects the proposed amounts of the Confirmation Fund.

(b) Confirmation Fund. On the Effective Date, or as soon thereafter as is practicable, the Liquidation Trustee shall establish the Confirmation Fund, which shall be funded from the Effective Date Cash in an amount equal to the Confirmation Amount. The Confirmation Fund shall be used to pay all Allowed Administrative Expense Claims, Allowed Other Secured Claims, Allowed Priority Tax Claims, and Allowed Non-Tax Priority Claims. Any amounts remaining in the Confirmation Fund, excluding the Initial Liquidation Trust Funding and the GUC Budget Excess, after: (i) all Allowed Administrative Expense Claims, Allowed Professional Fee

Claims, Allowed Other Secured Claims, Allowed Priority Tax Claims, and Allowed Non-Tax Priority Claims are satisfied in full; and (ii) the Disputed Confirmation Reserve, the Professional Fee Escrow Account, the Disputed GUC Fund, and the Liquidation Trust Expense Fund have been funded, shall become available for Distribution to the holder of the Prepetition BP Secured Claim.

(c) Disputed Confirmation Reserve. As soon as practicable after the Effective Date, the Liquidation Trustee shall establish the Disputed Confirmation Reserve, which shall be funded on each Distribution Date from the Effective Date Cash in an amount equal to the Distributions that would have been made to holders of Disputed Administrative Expense Claims, Disputed Other Secured Claims, Disputed Priority Tax Claims, and Disputed Non-Tax Priority Claims if such Claims were Allowed Claims in their full amounts or such lower amount as to which the holder of such Claim has agreed in writing or, in the case where any such Claim is unliquidated and/or contingent, the greater of (i) \$1, and (ii) such other amount as is reserved by order of the Bankruptcy Court made upon motion of the holder of such Claim. The Liquidation Trustee shall remove funds from the Disputed Confirmation Reserve as Disputed Administrative Expense Claims, Disputed Other Secured Claims, Disputed Priority Tax Claims, and Disputed Non-Tax Priority Claims are resolved, which funds shall be distributed as provided in this Plan (including with respect to any GUC Budget Excess), and any excess shall be returned to BP.

(d) Professional Fee Escrow Account. On the Effective Date, the Liquidation Trustee shall establish a Professional Fee Escrow Account and shall fund such Professional Fee Escrow Account with Effective Date Cash in an amount equal to the sum of the Professional Fee Claims. The Professional Fee Escrow Account shall be maintained in trust for the Professionals. Such funds shall not be considered property of the Debtors' Estates and shall not vest with the Liquidation Trustee or the Liquidation Trust. Any amounts remaining in the Professional Fee Escrow Account after all Allowed Professional Fee Claims are paid shall become available for Distribution to holders of Prepetition BP Secured Claim.

(e) Disputed GUC Fund. As soon as practicable after the Effective Date, the Liquidation Trustee shall establish the Disputed GUC Fund, which shall be funded on each Distribution Date from the Liquidation Trust Assets in an amount equal to the Distributions that would have been made to holders of Disputed General Unsecured Claims if such Claims were Allowed Claims or such lower amount as to which the holder of such Claim has agreed in writing or, in the case where any such Claim is unliquidated and/or contingent, the greater of (i) \$1, and (ii) such other amount as is reserved by order of the Bankruptcy Court made upon motion of the holder of such Claim. The Liquidation Trustee shall remove funds from the Disputed GUC Fund as Disputed General Unsecured Claims are resolved, which funds shall be distributed as provided in this Plan.

(f) Liquidation Trust Expense Fund. On the Effective Date, or as soon thereafter as is practicable, the Liquidation Trustee shall establish the Liquidation Trust Expense Fund, the funding of which may include any Liquidation Trust Assets; *provided, however*, that the Liquidation Trust Expense Fund may not include more than \$750,000 of the Initial Liquidation Trust Funding. The Liquidation Trust Expense Fund shall be used to pay the Liquidation Trust

Expenses in accordance with the Liquidation Trust Agreement, including, without limitation, costs and expenses of (i) counsel or other advisors retained by the Liquidation Trustee, (ii) any liquidation or administration of the Liquidation Trust Assets, and (iii) the prosecution of Causes of Action and Claims objections. Any amounts remaining in the Liquidation Trust Expense Fund after all Liquidation Trust Expenses are paid shall become available for Distribution to holders of Allowed General Unsecured Claims, the Allowed BP Deficiency Claim, and the Allowed BP Subordinated Claim in the priority of payment provided for in accordance with the provisions of the Plan.

(g) Subordinated Creditor Fund. On the date upon which all unsubordinated Allowed General Unsecured Claims have been satisfied in full, or as soon thereafter as is reasonably practicable, the Liquidation Trustee shall establish the Subordinated Creditor Fund, which shall be funded by the Liquidation Trust after satisfaction in full of all Allowed General Unsecured Claims in accordance with this Plan. The Subordinated Creditor Fund shall be used to pay the Allowed BP Deficiency Claim and the Allowed BP Subordinated Claim, in the priority of payment provided for in accordance with the provisions of the Plan.

#### **5.6 Powers and Duties of the Liquidation Trustee.**

As of the Effective Date, the Liquidation Trustee shall be appointed under Bankruptcy Code section 1123(b)(3)(B) and shall serve in such capacity and shall have comparable authority as a bankruptcy trustee of the Debtors as the exclusive representative of the Estates or any corresponding provision of federal or state laws and shall succeed to all of the Debtors' and Estates' rights. The powers, rights, and responsibilities of the Liquidation Trustee, all of which shall arise upon the occurrence of the Effective Date, shall be specified in the Liquidation Trust Agreement and shall include, but not be limited to:

(a) collecting and liquidating the Liquidation Trust Assets under the jurisdiction of the Bankruptcy Court;

(b) using commercially reasonable efforts to obtain the return of the Prepetition Collateral to BP, including directing any entity holding Prepetition Collateral to return such Prepetition Collateral directly to BP if the Liquidation Trustee deems it appropriate in its reasonable business judgment;

(c) asserting, prosecuting, objecting to, pursuing, compromising, and settling in accordance with the Liquidation Trustee's reasonable business judgment, all matters affecting the Estates, including, without limitation, Disputed Claims and/or other Causes of Action related thereto, to the extent set forth in the Liquidation Trust Agreement and except as provided therein, without further order of the Bankruptcy Court;

(d) asserting and enforcing all legal or equitable remedies and defenses belonging to the Debtors or their Estates, including, without limitation, setoff, recoupment, and any rights under Bankruptcy Code section 502(d);



(e) acting on behalf of the Debtors in all adversary proceedings and contested matters then pending or that can be commenced in the Bankruptcy Court and in all actions and proceedings pending or commenced elsewhere, and to settle, retain, enforce, dispute, or adjust any Claim and otherwise pursue actions involving the Assets of the Debtors that could arise or be asserted at any time under the Bankruptcy Code, unless otherwise waived, relinquished, or transferred in the Plan;

(f) taking such actions the Liquidation Trustee deems appropriate in his or her reasonable business judgment against any Person with respect to a Claim or Cause of Action and commencing any process or proceeding in the Bankruptcy Court or in any court of competent jurisdiction in accordance with applicable laws, to the extent set forth in the Liquidation Trust Agreement;

(g) making Distributions to holders of all Allowed Claims, including Professional Fee Claims, in accordance with the Plan and Liquidation Trust Agreement;

(h) proceeding with and employing all discovery devices permitted under applicable law, including Rule 2004 of the Bankruptcy Rules, in order to investigate any Claims or Causes of Action;

(i) employing, without further order of the Bankruptcy Court, professionals or other Persons to assist it in carrying out its duties hereunder and under the Liquidation Trust Agreement, and compensating and reimbursing the expenses of those professionals and other Persons on the terms to be agreed to by the Liquidation Trustee and such professionals and other Persons without further order of the Bankruptcy Court, to the extent set forth in the Liquidation Trust Agreement;

(j) investing Cash and other Liquidation Trust Assets in Permissible Investments, withdrawing and making Distributions of Cash to holders of Allowed Claims, and paying taxes and other obligations owed by the Debtors or incurred by the Liquidation Trustee from the Liquidation Trust Expense Fund in accordance with the Plan;

(k) coordinating the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any retained Assets and disposing of, and delivering title to others of, or otherwise realizing value of, all the remaining Assets;

(l) overseeing compliance with the Debtors' accounting, finance, and reporting obligations and the filing of final tax returns, refund requests, audits, and other corporate dissolution documents, if required;

(m) preparing financial statements and U.S. Trustee post-confirmation quarterly reports, until such time such time as the Bankruptcy Court enters an order (i) dismissing the Bankruptcy Cases, (ii) converting the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code, or (iii) approving a final decree closing the Bankruptcy Cases;

(n) paying all other expenses for winding down the affairs of the Debtors in accordance with a wind down budget or as otherwise agreed to by the Liquidation Trustee, and in the event of a dispute that cannot be resolved, resolving such dispute in the Bankruptcy Court, subject to the terms of the Plan;

(o) executing and delivering all documents, and taking all actions, necessary to consummate the Plan, implement the Liquidation Trust Agreement, and wind down the Debtors' business;

(p) executing and delivering all documents, and taking all actions necessary to wind down the business of Briarcliff Property Group, LLC, including the sale of Briarcliff, as deemed appropriate by the Liquidation Trustee, and acting as the managing member of Briarcliff Property Group, LLC;

(q) implementing and/or enforcing all provisions of the Plan;

(r) asserting and/or waiving, as the Liquidation Trustee deems appropriate, any attorney-client privilege or similar privilege belonging to any of the Debtors immediately prior to the Effective Date of the Plan; and

(s) such other powers as may be vested in or assumed by the Liquidation Trustee pursuant to the Liquidation Trust Agreement, Plan, other Bankruptcy Court order, or as may be needed or appropriate to carry out the provisions of the Plan and Liquidation Trust Agreement.

#### **5.7 Appointment of the Liquidation Trustee.**

The Liquidation Trustee shall be deemed the Estates' sole representative in accordance with Bankruptcy Code section 1123 and shall have all powers, authority, and responsibilities specified in the Plan, including, without limitation, the powers of a trustee under Bankruptcy Code sections 704 and 1106.

#### **5.8 Issuance of General Unsecured Creditor Interests.**

(a) General Unsecured Creditor Interests. On the Effective Date or as soon as practicable thereafter, the Debtors shall deliver to the Liquidation Trustee a list of each Person to receive General Unsecured Creditor Interests as of the Effective Date pursuant to the Plan, including the Allowed amounts of the Claims of, and the address of, each such Person.

(b) Transfer of General Unsecured Creditor Interests. The Liquidation Trustee shall maintain a register of the holders of General Unsecured Creditor Interests and shall adjust, without further order of the Bankruptcy Court, the register from time to time as General Unsecured Claims that are Disputed Claims become Allowed. Upon notice to the Liquidation Trustee by any holder of a General Unsecured Creditor Interest, the Liquidation Trustee shall amend the register

to reflect any transfer of a General Unsecured Creditor Interest by such holder to a transferee as set forth in the notice; *provided, however*, that the Liquidation Trustee need not reflect any transfer (or make any distribution to any transferee) and will give notice to such holder that no transfer has been recognized in the event the Liquidation Trustee reasonably believes that such transfer (or the distribution to such transferee) may constitute a violation of applicable laws or might cause the Liquidation Trust to be required to register the General Unsecured Creditor Interests, or to become a reporting company, under the Securities Exchange Act of 1934, as amended.

#### **5.9 Liquidation Trustee Reporting.**

The Liquidation Trustee shall prepare and file with the Court, and serve upon BP and the U.S. Trustee, such reports as are required under Section 5.24, including quarterly reports, beginning with the first full calendar quarter after the Effective Date, regarding the liquidation or other administration of the Assets of the Estates, Distributions made by the Liquidation Trustee, and the status of the prosecution or settlement of any Claims and Causes of Action. The Liquidation Trustee shall pay fees of the U.S. Trustee as provided in Section 5.24.

#### **5.10 Fees and Expenses of the Liquidation Trustee.**

Except as otherwise ordered by the Bankruptcy Court or specifically provided for in the Plan, the amount of Liquidation Trust Expenses and any compensation and expense reimbursement Claims (including, without limitation, reasonable fees and expenses of counsel) of the Liquidation Trustee arising out of the liquidation of the Assets of the Estates, the making of Distributions under the Plan, and the performance of any other duties given to it shall be paid from the Liquidation Trust Expense Fund and in accordance with the Liquidation Trust Agreement; *provided, however*, that any fees or expenses (including legal) incurred by the Liquidation Trustee in connection with collecting or recovering any Prepetition Collateral will be netted against the proceeds collected therefrom.

#### **5.11 Resignation or Removal of Liquidation Trustee.**

If the Liquidation Trustee resigns or is removed, dissolves, or is incapacitated, the terms of the Liquidation Trust Agreement shall govern regarding the designation of a successor Liquidation Trustee, and following such designation, the successor Liquidation Trustee, without further act, shall become fully vested with all of the rights, powers, duties, and obligations of his or her predecessor, with the same compensation of the predecessor Liquidation Trustee. No successor Liquidation Trustee shall in any event have any liability or responsibility for the acts or omissions of any of his or her predecessors.

#### **5.12 Reliance on Documents.**

The Liquidation Trustee may rely, and shall be protected in acting or refraining from acting, upon any certificates, opinions, statements, instruments or reports believed by it to be genuine and to have been signed or presented by the proper entity, including, without limitation,

claims lists and data provided to the Liquidation Trustee by the Claims Agent, the Debtors, or the Debtors' financial advisor, upon which the Liquidation Trustee shall base Distributions.

**5.13 Corporate Action.**

The Plan will be administered by the Liquidation Trustee and all actions taken under the Plan in the name of the Debtors shall be taken through the Liquidation Trustee in accordance with the provisions of the Plan and the Liquidation Trust Agreement.

**5.14 Liquidation and Dissolution of Debtors.**

On the Effective Date, without the necessity for any other or further action to be taken by or on behalf of the Debtors, and upon the transfer of the Liquidation Trust Assets to the Liquidation Trust and the Prepetition Collateral to BP in accordance with ARTICLE 5 of the Plan, the members of the board of directors or managers, as the case may be, and the respective officers, of each of the Debtors shall be deemed to have been removed, and each such Debtor shall be deemed dissolved for all purposes unless the Liquidation Trustee determines that dissolution can have any adverse impact on the Liquidation Trust Assets, the Prepetition Collateral, or the Postpetition Collateral; *provided, however*, that neither the Debtors nor any party released pursuant to ARTICLE 8 of the Plan shall be responsible for any liabilities that may arise as a result of non-dissolution of the Debtors.

**5.15 Dissolution of Creditors' Committee.**

On the Effective Date, the Creditors' Committee shall be deemed to be dissolved and the members of the Creditors' Committee shall be released and discharged from all further authority, duties, responsibilities, and obligations arising from or related to the Bankruptcy Cases and Professionals retained by the Committee shall be released and discharged from all further authority, duties, responsibilities, and obligations relating to the Debtors and the Bankruptcy Cases; *provided, however*, that the foregoing shall not apply to any matters concerning (a) any Professional Fee Claims held or asserted by any Professional retained by the Committee or reimbursement of any reasonable and documented expenses of the Committee's members incurred in their capacity as such, (b) any appeal from the Confirmation Order, or (c) the withdrawal of the Standing Motion pursuant to Section 5.29.

**5.16 Closing of the Bankruptcy Cases.**

At such time as the Liquidation Trustee deems appropriate and in accordance with Bankruptcy Code section 350(a) and Bankruptcy Rule 3022, the Liquidation Trustee shall seek authority from the Bankruptcy Court to close the Bankruptcy Cases. Unless the Bankruptcy Court orders otherwise, within fourteen (14) days after the Estates are fully administered, the Liquidation Trustee will file and serve upon the U.S. Trustee a closing report substantially in the form available on the Bankruptcy Court's website in accordance with Rule 3022-1 of the Local Bankruptcy Rules for the Southern District of New York.

**5.17 Plan Distributions.**

After the Effective Date, and subject to the establishment and funding of the Liquidation Trust, the Confirmation Fund, Liquidation Trust Expense Fund, and Disputed Confirmation Reserve under Section 5.5 and as set forth in greater detail in ARTICLE 4, Distributions shall be made by the Liquidation Trustee in accordance with ARTICLE 2, ARTICLE 4, and ARTICLE 9.

**5.18 Preservation and Abandonment of Records.**

The Debtors shall preserve for the benefit of the Liquidation Trustee the Debtors' books and records and transfer the same to the Liquidation Trustee. After the Effective Date, the Liquidation Trustee shall preserve or abandon (with or without destruction) the Debtors' books and records as deemed appropriate by the Liquidation Trustee in the exercise of the Liquidation Trustee's reasonable business judgment.

**5.19 General Disposition of Assets.**

Pursuant to Bankruptcy Code section 1123(a)(5) and subject to the terms of the Plan, as soon as is reasonably practicable after the Effective Date, the Liquidation Trustee shall sell or otherwise dispose of, and liquidate to or otherwise convert to Cash, any non-Cash Assets in such manner as the Liquidation Trustee shall determine in his judgment in consultation with the Secured Creditors (to the extent any such Assets are collateral of the Secured Creditors), but in no event shall the Liquidation Trustee be prevented from returning Assets that are collateral of a Secured Creditor to such Secured Creditor in a commercially reasonable manner.

**5.20 Final Administrative Expense Claims Bar Date.**

The Confirmation Order shall establish that requests for payment of Administrative Expense Claims that were not required to be filed and served by the First Administrative Expense Claim Bar Date (or any other subsequent bar date established by the Bankruptcy Court for Administrative Expense Claims), other than:

(a) an Administrative Expense Claim that has become an Allowed Administrative Expense Claim on or before the Effective Date;

(b) an Administrative Expense Claim on account of fees and expenses incurred on or after the Petition Date by ordinary course professionals retained by the Debtors pursuant to an order of the Bankruptcy Court; or

(c) an Administrative Expense Claim arising out of the employment by the Debtors of an individual in the ordinary course of business from and after the Petition Date, but only to the extent that such Administrative Expense Claim is solely for outstanding wages, commissions, accrued benefits, or reimbursement of business expenses;

must be filed and served on or before 5:00 p.m. (prevailing Eastern Time) on or before the first Business Day after the fourteenth (14th) day after the Confirmation Date (the “Final Administrative Expense Claims Bar Date”).

Objections, if any, to a timely request for payment of an Administrative Expense Claim must be filed and served on the Liquidation Trustee and the requesting party no later than ninety (90) days after the Effective Date.

No payment or Distributions will be made on account of any Administrative Expense Claim until such Claim becomes an Allowed Claim. Any Person asserting an Administrative Expense Claim that was subject to the First Administrative Expense Claim Bar Date that did not timely file and serve an application or motion seeking approval of such Administrative Expense Claim shall be forever barred from asserting any such right to payment as against the Debtors, the Estates, and the Liquidation Trust. Any Person asserting an Administrative Expense Claim not subject to the First Administrative Expense Claim Bar Date that fails to file and serve an application or motion seeking approval of the Administrative Expense Claim on or before the Final Administrative Expense Claims Bar Date shall be forever barred from asserting any such right to payment as against the Debtors, the Estates, and the Liquidation Trust.

#### **5.21 Deadline for Filing Applications for Professional Fee Claims.**

All parties seeking payment of Professional Fee Claims must file with the Bankruptcy Court a final application and/or an application for payment of reasonable fees and expenses under Bankruptcy Code section 503(b), as applicable, on or before the first Business Day after the thirtieth (30th) day after the Effective Date (the “Fee Application Deadline”). Any Professional failing to file and serve such final application or 503(b) motion on or before the Fee Application Deadline shall be forever barred from asserting any such right to payment against the Debtors or the Estates. Objections to such Professional Fee Claims, if any, must be filed and served no later than fifty (50) days after the Effective Date.

#### **5.22 Execution of Documents to Effectuate Plan.**

From and after the Effective Date, the Liquidation Trustee shall have the exclusive power and authority to execute any instrument or document to effectuate the provisions of the Plan. Entry of the Confirmation Order shall authorize the Debtors and the Liquidation Trustee to take, or cause to be taken, all actions necessary or appropriate to consummate and implement the provisions of the Plan.

#### **5.23 Disallowance of Claims Without Further Order of the Court.**

As of the Effective Date, any Scheduled Claim designated as disputed, contingent, or unliquidated in amount and for which a proof of Claim has not been filed by the Creditor by the applicable Bar Date shall be deemed Disallowed and expunged. All Scheduled Claims that correspond to a proof of Claim filed by a particular Creditor by the applicable Bar Date shall be

deemed to have been superseded by such later filed proof of Claim, and the Scheduled Claim, regardless of priority, shall be expunged from the Claims register; *provided however*, that such proofs of Claim shall be subject to objection in accordance with Section 9.10.

#### **5.24 Post-Effective Date Reports and Fees.**

Following the Effective Date and until the Bankruptcy Cases are closed, not less than once every one-hundred and eighty (180) days, the Liquidation Trustee shall be responsible for the filing of all post-Effective Date reports required during such periods with the U.S. Trustee regarding the liquidation or other administration of property under the Liquidation Trustee's control pursuant to the Plan, Distributions made by the Liquidation Trustee, and other matters required to be included in such report, and shall pay from the Liquidation Trust Expense Fund all post-Effective Date Statutory Fees. Notwithstanding any substantive consolidation of the Debtors under the Plan, each and every Debtor and the Liquidation Trustee shall remain obligated to pay Statutory Fees to the U.S. Trustee until the particular Debtor's case has been closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

#### **5.25 Cancellation of Notes, Instruments, Certificates, and Other Documents.**

Except as expressly provided herein, on the Effective Date, all notes, instruments, certificates evidencing debt of, or Interests in, the Debtors and any warrants, options, and other entitlements to purchase and/or receive Interests in the Debtors, shall be deemed surrendered and cancelled and any obligation of the Debtors thereunder shall be discharged; *provided, however*, that the liens in favor of BP under the Final DIP Order and the Prepetition BP Secured Loan Documents shall remain attached and fully perfected against the Postpetition Collateral and the Prepetition Collateral (other than the Liquidation Trust Assets) until the repayment in full of the DIP Financing Claims and the return of the Postpetition Collateral and the Prepetition Collateral (other than the Liquidation Trust Assets) to BP.

#### **5.26 Insurance Preservation.**

Nothing in the Plan, the Confirmation Order, or the Liquidation Trust Agreement, alters the rights and obligations of the Debtors (and their Estates) and the Debtors' insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. All of the Debtors' rights and their Estates' rights under any Insurance Policy to which the Debtors and/or the Debtors' Estates may be beneficiaries shall vest with the Liquidation Trust for the benefit of the Beneficiaries of the Liquidation Trust and all of the beneficiaries of such policies. For the avoidance of doubt, the Debtors are deemed to have assumed all of the Insurance Policies.

**5.27 Preservation of Causes of Action.**

Except as otherwise provided in this Plan or in any contract, instrument, release, or agreement entered into in connection with the Plan and the Final DIP Order, in accordance with Bankruptcy Code section 1123(b), all Claims and Causes of Action that the Debtors or Estates may have against any Person or Entity are preserved and transferred to the Liquidation Trustee on the Effective Date, including, without limitation, any and all Causes of Action the Debtors, Estates, or other appropriate party in interest may assert under Bankruptcy Code sections 502, 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553 and 724(a).

**5.28 Section 1146 Exemption from Certain Taxes and Fees.**

Pursuant to and to the extent set forth in Bankruptcy Code section 1146(a), any issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer of property, pursuant to or in connection with this Plan shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States or by any other Governmental Unit, and the Confirmation Order shall direct the appropriate federal, state or local (domestic or foreign) governmental officials or agents to forgo the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents evidencing such action or event without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to all actions, agreements and documents necessary to evidence and implement the provisions of, transactions contemplated by and the distributions to be made under this Plan.

**5.29 Withdrawal of the Standing Motion.**

Within three (3) business days after the Effective Date, the Committee shall file a notice of withdrawal of the Standing Motion.

**5.30 Settlement Pursuant to Bankruptcy Rule 9019.**

Pursuant to Bankruptcy Code section 1123 and Bankruptcy Rule 9019, the Plan incorporates a compromise and settlement of various potential Claims and Causes of Action, including those for which the Committee sought standing to bring pursuant to the Standing Motion. The settlement of those potential Claims and Causes of Action is a cornerstone of the Plan and necessary to achieve a beneficial and efficient resolution of the Chapter 11 Cases for all parties in interest. The Plan shall be deemed to constitute a motion pursuant to Bankruptcy Rule 9019, seeking approval of a settlement, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such motion, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements encompassed in the Plan are within the range of reasonableness, in the best interests of the Debtors, their Estates, their Creditors, and other parties-in-interest, and fair and equitable.



### **5.31 Return of Deposits.**

Unless the Debtors have agreed otherwise in a written agreement or stipulation approved by the Bankruptcy Court, all security deposits, including Posted Collateral, provided by the Debtors to any Entity at any time, to the extent not returned to the Debtors prior to the Effective Date, shall be returned to the Liquidation Trustee as set forth in agreements between the Debtors and the Entities holding such security deposits or under applicable law, without deduction or offset of any kind, except for such deductions or offsets as allowed under the agreements between the Debtors and the Entities holding such security deposits.

## **ARTICLE 6- TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **6.1 General Provisions.**

Except with respect to the Insurance Policies, all executory contracts and unexpired leases of the Debtors shall be deemed rejected as of the Effective Date, unless a particular executory contract or unexpired lease (i) has previously been assumed or rejected pursuant to an order of the Bankruptcy Court or applicable provisions of the Bankruptcy Code, (ii) has expired or otherwise terminated pursuant to its terms, or (iii) is the subject of a separate assumption motion filed by one of the Debtors (with the consent of the Committee and BP) under Bankruptcy Code section 365.

### **6.2 Notice of Deemed Rejection/Rejection Bar Date.**

Any party to an executory contract or unexpired lease that is rejected in accordance with Section 6.1 shall file a proof of Claim for damages from such rejection no later than thirty (30) days after the Effective Date. The failure to timely file a proof of Claim shall be deemed a waiver of any Claim in connection with the rejection of such contract or lease.

## **ARTICLE 7 - CONDITIONS PRECEDENT; CONFIRMATION AND EFFECTIVE DATE**

### **7.1 Conditions Precedent to Plan Confirmation.**

The following conditions must be satisfied or waived by the Debtors, with the consent of BP and the Committee, in accordance with Section 7.3 on or before the Confirmation Date:

(a) The Disclosure Statement Order shall have been entered by the Bankruptcy Court and shall have become a Final Order; and

(b) The Confirmation Order to be entered by the Bankruptcy Court shall contain provisions that, among other things: (i) authorize the implementation of the Plan in accordance with its terms; (ii) approve in all respects the other settlements, transactions, and agreements to be effectuated under the Plan; (iii) find that the Plan complies with all applicable provisions of the Bankruptcy Code, including that the Plan was proposed in good faith and that the Confirmation Order was not procured by fraud; (iv) order that the Assets of the Estates are

transferred to the Liquidation Trustee on the Effective Date, free and clear of all Claims, liens, Encumbrances and interests of any Entity except for the liens and security interests of the Secured Creditors; and (v) order that the Liquidation Trustee is authorized to take any and all action necessary or appropriate to perform his duties hereunder.

**7.2 Conditions Precedent to the Effective Date.**

The Effective Date shall not occur and no obligations under the Plan shall come into existence unless each of the following conditions is met or, alternatively, is waived in accordance with Section 7.3:

(a) The conditions precedent to Plan Confirmation in Section 7.1 shall have been satisfied or waived;

(b) The Confirmation Order shall have become a Final Order and such order shall not have been amended, modified, vacated, stayed, or reversed;

(c) All requisite filings with governmental authorities and third parties, to the extent required, shall have become effective;

(d) All documents contemplated by this Plan to be executed and delivered on or before the Effective Date shall have been executed and delivered;

(e) The Liquidation Trustee shall have been designated by the Committee, after consultation with BP, and shall be empowered to take all actions as contemplated by this Plan and the Liquidation Trustee Agreement;

(f) The Confirmation Fund, Professional Fee Escrow Account, Initial Liquidation Trust Funding, Liquidation Trust Expense Fund, and Disputed Confirmation Reserve shall be fully funded as may be applicable; and

(g) The Confirmation Amount *minus* (i) the Initial Liquidation Trust Funding and (ii) the GUC Budget Excess shall not exceed the aggregate budgeted amount of disbursements for Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Non-Tax Priority Claims, Professional Fee Claims, and Allowed Other Secured Claims as set forth in the Approved Budget.

**7.3 Waiver of Conditions Precedent.**

Each condition precedent in Sections 7.1 and 7.2, except the condition precedent in Section 7.2(b), may be waived or modified by the Debtors, with the written consent of BP and the Committee, without further Court approval, in whole or in part. The condition precedent in Section 7.2(b) shall be waived or modified by the Debtors, upon written direction from BP and the Committee, without further Court approval.

## **ARTICLE 8 - INJUNCTION; RELEASE; EXCULPATION**

### **8.1 General Injunctions.**

The following provisions shall apply and shall be fully set forth in the Confirmation Order.

(a) **Injunctions Against Interference with Consummation or Implementation of Plan.** All holders of Claims or Interests shall be enjoined from commencing or continuing any judicial or administrative proceeding or employing any process against any of the Debtors or the Estates with the intent or effect of interfering with the consummation or implementation of the Plan or the transfers, payments or Distributions to be made hereunder.

(b) **Plan Injunction.** Except as otherwise specifically provided for by this Plan, on and after the Effective Date, all Persons shall be enjoined from (i) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order; (ii) the creation, perfection, or enforcement of any Encumbrance of any kind; (iii) the commencement or continuation of any action, employment of process or act to collect, offset, or recover any Claim or Cause of Action satisfied, released, or enjoined under this Plan; and/or (iv) the assertion of any right of setoff, counterclaim, exculpation, or subrogation of any kind, in each case against the Debtors or the Estates to the fullest extent authorized or provided by the Bankruptcy Code.

(c) **No Bar to Claims Against Third Parties.** Holders of Claims or Interests against the Debtors are not barred or otherwise enjoined by the Plan from pursuing any recovery against Persons that are not the Debtors, except as set forth in this Article 8.

### **8.2 All Distributions Received in Full and Final Satisfaction.**

Except as otherwise set forth herein, all payments and all Distributions to be made in accordance with the Plan on account of Claims (including Administrative Expense Claims) shall be received in full and final satisfaction, settlement, and release of the Estates' obligations for such Claims as against the Debtors and their property and the Estates.

### **8.3 No Modification of Res Judicata Effect.**

The provisions of this Article 8 are not intended, and shall not be construed, to modify the *res judicata* effect of any order entered in the Bankruptcy Cases, including, without limitation, the Confirmation Order and any order finally determining Professional Fee Claims to any Professional.

**8.4 Exculpation for Debtors, Committee, and Estate Professionals.**

To the extent permitted by Bankruptcy Code section 1125(e), the Debtors, their equity holders, officers, directors, employees and Professionals (including the professional firms and individuals within such firms), and the Creditors' Committee and its members (acting in such capacity), their respective officers, directors, employees and Professionals (including professional firms and individuals within such firms) shall neither have nor incur any liability to any Person for any act taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, administration, funding, confirmation, or consummation of the Plan, the Disclosure Statement, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan, or any act taken or omitted to be taken during the Bankruptcy Cases, except for acts or omissions as a result of willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute, and may be submitted as, a complete defense to any Claim or liability released under the Plan.

**8.5 Exculpation for Liquidation Trustee.**

The Liquidation Trustee and its employees, attorneys, accountants, financial advisors, representatives, and agents, each solely in such capacity, shall not have or incur any liability to any Person or Entity for any act or omission in connection with, or arising out of, the Plan or the property to be distributed under the Plan; except for acts or omissions as a result of willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction.

**8.6 Releases by the Debtors.**

Effective as of the Effective Date, without in any manner limiting or altering any releases granted to the Postpetition Secured Party and Senior Lien Secured Party under the Final DIP Order, each Debtor on behalf of itself and its Estate, each of their respective affiliates, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest, for good and valuable consideration provided by each of the Released Parties ~~and CBLIC~~, shall be deemed to provide a full release to each of the Released Parties ~~and CBLIC~~ (and each such Released Party ~~and CBLIC~~ shall be deemed released by each Debtor and its Estate) and their respective property from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, derivative Claims, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date, in law, at equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part

upon any act or omission, transaction, or other occurrence or circumstance existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, the Plan, Briarcliff, the Debtors' out-of-court restructuring efforts, the Bankruptcy Cases, the Postpetition Supply Facility, the Postpetition Transaction Documents, and the Senior Lien Transaction Documents (as defined in the Final DIP Order) or any matters arising under or in connection with the same, including those that the Debtors would have been legally entitled to assert or that any holder of a Claim against or Interest in the Debtors, or any other Entity could have been legally entitled to assert derivatively or on behalf of the Debtors or their Estates; *provided, however*, that the foregoing Debtor Release shall not operate to waive or release any Claims or Causes of Action of the Debtors or their Estates for actual fraud or fraud grounded in deliberate recklessness. For the avoidance of doubt, any Claims in respect of Avoidance Actions against the Released Parties ~~and CBLIC~~ shall be released.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties ~~and CBLIC~~; (2) a good-faith settlement and compromise of the Claims released by the Debtor Release; (3) in the best interests of the Debtors' Estates and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors' Estates or the Liquidation Trustee asserting any Claim or Cause of Action released under the Debtor Release.

#### **8.7 Releases by Releasing Parties.**

Effective as of the Effective Date, the Releasing Parties shall be deemed to provide a full release to the Released Parties and their respective property from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, derivative Claims, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date, in law, at equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstance existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, the Plan, Briarcliff, the Debtors' out-of-court restructuring efforts, the Bankruptcy Cases, the Postpetition Supply Facility, the Postpetition Transaction Documents, and the Senior Lien Transaction Documents (as defined in the Final DIP Order) or any matters arising under or in connection with the same, including those that the Debtors would have been legally entitled to assert or that any holder of a Claim against or Interest in the Debtors or any other Entity could have been legally entitled to assert derivatively or on behalf of the Debtors or their Estates. Nothing in the foregoing shall result in any individual who, on or after the Petition Date, is or was a director, officer, or employee, waiving (i) any indemnification Claims against the Debtors or any of their insurance carriers or any rights

as beneficiaries of any insurance policies, including (without limitation) any D&O Policies, (ii) any Claims asserted in timely-filed proofs of claim, or (iii) claims for wages, claims for benefits, and/or claims arising in connection with the KEIP/KERP.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third Party Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Third Party Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of the Claims released by the Third Party Release; (3) in the best interests of the Debtors' Estates and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any Claim released under the Third Party Release.

Nothing in this Section 8.7 shall release any right or obligation of any party under any other provision of this Plan or the Confirmation Order.

## **ARTICLE 9 - PROVISIONS GOVERNING DISTRIBUTIONS**

### **9.1 Payment in U.S. Dollars.**

All Cash payments required under the Plan shall be made in U.S. dollars by checks drawn on a domestic bank selected by the Liquidation Trustee in accordance with the Plan or by wire transfer from a domestic bank, at the option of the Liquidation Trustee. The Liquidation Trustee may use the services of a third party to aid in the Distributions required to be made under this Plan.

### **9.2 Distributions Only on Business Days.**

Notwithstanding the foregoing provisions, if any Distribution under this Plan is due on a day other than a Business Day, such Distribution shall instead be made the next Business Day.

### **9.3 Unclaimed Distributions.**

Unclaimed Distributions shall be canceled (by a stop payment order or otherwise), the Claim(s) relating to such Distribution(s) shall be deemed forfeited and expunged without any further action or order of the Bankruptcy Court, and the holder of such Claim(s) shall be removed from the Distribution schedules and expunged from the Claims register and shall receive no further Distributions under the Plan. Any such Unclaimed Distributions shall, as soon as is practicable, be redistributed pursuant to the provisions of the Plan.

### **9.4 Timing of Distributions Generally.**

The first Distribution shall occur as soon as practicable on or after the Effective Date. To the extent subsequent Distributions are necessary, such subsequent Distributions shall occur as

soon after the first Distribution Date as the Liquidation Trustee shall reasonably determine is appropriate in light of (i) the amount of Cash on hand; (ii) the amount and nature of Disputed Claims; (iii) the activities to be accomplished, including their anticipated duration and costs; (iv) the length of time since any prior Distribution; and (v) the costs of effecting any interim Distribution.

**9.5 Timing of Distributions on Disputed Claims Subsequently Allowed.**

If a Disputed Claim is Allowed, in whole or in part, after the Effective Date, a Distribution shall be made on account of such Allowed Claim on the next Distribution Date that is at least fifteen (15) Business Days after such Claim is Allowed.

**9.6 No Payment or Distribution on Disputed Claims.**

Any contrary provision hereof notwithstanding, no payments or other Distributions shall be made on account of any Disputed Claim, or any portion thereof, unless and until such Claim is Allowed by Final Order. For the avoidance of doubt, no portion of any Disputed Claim is entitled to a Distribution. Holders of Disputed Claims shall be bound, obligated, and governed in all respects by this Plan.

**9.7 Disputed Distribution.**

If a dispute arises as to the identity of a holder of an Allowed Claim who is to receive a Distribution, the Liquidation Trustee may, in lieu of making such Distribution to such holder, hold such amount until the dispute is resolved by Final Order or by written agreement among the parties to such dispute.

**9.8 Transmittal of Payments and Notices.**

All Distributions shall be made to the holder of a Claim by regular first-class mail, postage prepaid, in an envelope addressed to such holder at the address listed on its proof of Claim filed with the Claims Agent or Bankruptcy Court or, if no proof of Claim was filed, (i) at the address listed on the Debtors' Schedules, or (ii) at such address that a holder of a Claim provides to the Debtors and the Liquidation Trustee after the Effective Date in writing and files at least fifteen (15) Business Days prior to a Distribution Date. Neither the Debtors nor the Liquidation Trustee shall have any duty to ascertain the mailing address of any holder of a Claim other than as set forth herein. The date of payment or delivery shall be deemed to be the date of mailing. Payments made in accordance with the provisions of this Section 9.8 shall be deemed made to the holder regardless of whether such holder actually receives the payment.

**9.9 Record Date for Distributions.**

Except as otherwise provided in a Final Order, transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 with appropriate filings made on or before the Effective Date

(the “Record Date”) shall be treated as the holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer(s) may not have expired prior to the Record Date. The Debtors and the Liquidation Trustee shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. In making a Distribution with respect to any Claim, the Debtors and the Liquidation Trustee shall be entitled to recognize and deal for all purposes hereunder only with the Person who is listed on the proof of Claim filed with respect to such Claim, on the Debtors’ Schedules as the holder thereof, and upon such other evidence or record of transfer or assignment filed as of the Record Date.

**9.10 Claims Administration Responsibility.**

(a) Reservation of Rights. Unless a Claim is specifically Allowed prior to or after the Effective Date or under the Plan, the Liquidation Trustee reserves any and all objections to any and all Claims and motions or requests for the payment of Claims, whether administrative expense, secured or unsecured, including, without limitation, any and all objections to the validity or amount of any and all alleged DIP Financing Claims, Administrative Expense Claims, Priority Tax Claims, or Non-Tax Priority Claims, liens and security interests, whether under the Bankruptcy Code, other applicable law or contract. The failure to object to any Claim prior to the Effective Date shall be without prejudice to the Liquidation Trustee’s rights to contest or otherwise defend against such Claim in the Bankruptcy Court when and if such Claim is sought to be enforced by the holder of the Claim.

(b) Objections to Claims. The Liquidation Trustee may dispute, object to, compromise, or otherwise resolve all Claims. Unless otherwise provided in the Plan or ordered by the Bankruptcy Court, all objections to Claims shall be filed and served no later than the Claims Objection Bar Date, provided that the Liquidation Trustee may request (and the Bankruptcy Court may grant) an extension of time by filing a motion with the Bankruptcy Court.

(c) Filing Objections. An objection to a Claim shall be deemed properly served on the claimant if the Liquidation Trustee causes service of any such objection to be effected in accordance with Bankruptcy Rule 3007 by mailing or otherwise delivering the objection and a notice of hearing thereon to the claimant at the address set forth on such claimant’s proof of Claim at least thirty (30) days prior to the hearing thereon.

(d) Determination of Claims. Except as otherwise agreed by the Debtors, any Claim as to which a proof of Claim or motion or request for payment was timely filed in the Bankruptcy Cases may be determined and liquidated after the Effective Date pursuant to (i) a Final Order, or (ii) applicable non-bankruptcy law. Any Claim determined to be an Allowed Claim after the Effective Date under this Section 9.10(d) shall be treated as an Allowed Claim in accordance with this Plan.



**9.11 Disputed Claims.**

(a) For purposes of effectuating the provisions of the Plan and the Distributions to holders of Allowed Claims, the Court, on or prior to the Effective Date, or thereafter upon the request of any holder of a Claim or the Liquidation Trustee, may liquidate the amount of Disputed Claims pursuant to Bankruptcy Code section 502(c), in which event the amounts so fixed or liquidated shall be deemed to be the aggregate amounts of the Disputed Claims under Bankruptcy Code section 502(c) for purposes of Distribution under this Plan and for purposes of the Disputed Confirmation Reserve and Disputed GUC Fund.

(b) When a Disputed Claim becomes an Allowed Claim, there shall be distributed to the holder of such Allowed Claim, in accordance with the provisions of the Plan (but in no event later than the next succeeding Distribution Date), Cash in the amount of all Distributions to which such holder would have been entitled if such holder's Claim were Allowed on the Effective Date, to the extent of available Cash to make such Distribution.

(c) In no event shall any holder of any Disputed Claim be entitled to receive (under this Plan or otherwise) any Cash payment that is greater than the amount reserved, if any, for such Disputed Claim under the Plan. In no event shall the Debtors or the Liquidation Trustee have any responsibility or liability for any loss to or of any amount reserved under this Plan unless such loss is the result of that party's fraud, willful misconduct, or gross negligence. In no event may any Creditor whose Disputed Claim is subsequently Allowed pursue or recover from any other Creditor any funds received as Distributions under the Plan.

(d) To the extent that a Disputed Claim ultimately becomes an Allowed Claim and is entitled to a Distribution in an amount less than the amount reserved for such Disputed Claim, then on the next succeeding Distribution Date, the Liquidation Trustee shall make, in accordance with the terms of the Plan, a Distribution of the excess amount reserved for such Disputed Claim in accordance with the Plan.

(e) The Disputed Confirmation Reserve and the Disputed GUC Fund shall be treated as disputed ownership funds, within the meaning of Treasury Regulation section 1.468B-9, for all purposes associated with taxation.

(f) Except as expressly set forth in the Plan, or otherwise agreed to in writing or ordered by the Court, the Liquidation Trustee shall not have any duty to fund the Disputed Confirmation Reserve or the Disputed GUC Fund.

(g) The Liquidation Trustee shall pay, or cause to be paid, out of the funds held in the Disputed Confirmation Reserve and the Disputed GUC Fund, any tax imposed by any federal, state, or local taxing authority on the income generated by the funds or property held in the Disputed Confirmation Reserve and Disputed GUC Fund, respectively. The Liquidation Trustee shall file, or cause to be filed, any tax or information return related to the Disputed Confirmation

Reserve and the Disputed GUC Fund that is required by any federal, state, or local taxing authority.

**9.12 No Payments of Fractional Cents or Distributions of Less Than Thirty-Five Dollars.**

(a) Any contrary provision hereof notwithstanding, for purposes of administrative convenience, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with halfpennies or less being rounded down and fractions in excess of half of a penny being rounded up.

(b) Any contrary provision hereof notwithstanding, for purposes of administrative convenience, no Distribution of less than thirty-five dollars (\$35) shall be made pursuant to the Plan. Whenever any Distribution of less than thirty-five dollars (\$35) under the Plan would otherwise be required, such funds will be retained by the Liquidation Trustee for the account of the recipient until such time that successive Distributions aggregate to thirty-five dollars (\$35), at which time such payment shall be made, and if successive Distributions do not ever reach thirty-five dollars (\$35) in the aggregate, then such Distributions shall be returned to the Liquidation Trust.

**9.13 Setoff and Recoupment.** Except as otherwise provided in the Plan, the Liquidation Trustee may, but shall not be required to, set off against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any Claims, defenses or Causes of Action of any nature whatsoever that the Debtors may have, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors or Liquidation Trustee of any right of setoff or recoupment against the holder of any Claim.

**9.14 Payment of Taxes on Distributions Received Pursuant to the Plan.**

(a) As a precondition to payment of any Distribution to a Creditor under this Plan, unless included on the official proof of Claim form filed by such Creditor in the Bankruptcy Cases, each Creditor shall provide the Liquidation Trustee a valid tax identification or social security number (collectively, the “Tax Information”) for purposes of tax reporting by the Debtors. All Entities that receive Distributions under the Plan shall be responsible for reporting and paying, as applicable, any taxes on account of their Distributions.

(b) At such time as the Debtors or Liquidation Trustee believe that Distributions to a particular Class of Claims are likely, the Liquidation Trustee shall request Tax Information in writing from the Creditors (the “Tax Information Request”). Any Creditor who fails to respond to the Tax Information Request within ninety (90) days from the date posted on the Tax Information Request shall forfeit all Distributions such Creditor may otherwise be entitled to

under this Plan, and such forfeited funds will revert to the Estates to be disbursed in accordance with the terms and priorities established in this Plan.

**9.15 Compliance With Tax Withholding and Reporting Requirements.**

With respect to all Distributions made under the Plan, the Debtors and Liquidation Trustee will comply with all withholding and reporting requirements of any federal, state, local, or foreign taxing authority.

**ARTICLE 10 - PLAN INTERPRETATION, CONFIRMATION AND VOTING**

**10.1 Procedures Regarding Objections to Designation of Classes as Impaired or Unimpaired.**

If the designation of the treatment of a Class as impaired or unimpaired is objected to, the Bankruptcy Court shall determine the objection, and voting shall be permitted or disregarded in accordance with the determination of the Bankruptcy Court.

**10.2 Withdrawal and Modification of Plan.**

This Plan may be withdrawn or modified by the Debtors at any time prior to the Confirmation Date. The Debtors may modify the Plan, with the consent of BP and the Committee, in any manner consistent with Bankruptcy Code section 1127 prior to substantial consummation thereof. Upon request by the Liquidation Trustee, and with the consent of BP, the Plan may be modified after substantial consummation with the approval of the Bankruptcy Court, provided that such modification does not affect the essential economic treatment of any Person that objects in writing to such modification.

**10.3 Governing Law.**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or the Plan, the laws of the State of New York applicable to contracts executed in such State by residents thereof and to be performed entirely within such State shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with this Plan.

**10.4 Voting of Claims.**

Each holder of a Claim as of the Record Date in Classes 1B, 2, 3, and 4 shall be entitled to vote to accept or reject the Plan. The Disclosure Statement Order shall govern the manner and procedures for casting Ballots with the Voting Agent.

**10.5 Acceptance by Impaired Class.**

Consistent with Bankruptcy Code section 1126(c), and except as provided for in Bankruptcy Code section 1126(e), a Class of creditors shall have accepted the Plan if it is accepted by at least two-thirds in dollar amount and more than one-half in number of the holders of Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.

**10.6 Presumed Acceptances of Plan.**

Class 1A is unimpaired under the Plan and, therefore, is conclusively presumed to have accepted the Plan.

**10.7 Presumed Rejections of Plan.**

Class 5 is presumed to have rejected the Plan but may elect to accept the Plan.

**10.8 Cramdown.**

The Debtors request confirmation of this Plan under Bankruptcy Code section 1129(b) with respect to any impaired Class that does not accept this Plan pursuant to Bankruptcy Code section 1126. The Debtors reserve the right to modify this Plan or the Plan Supplement, with the consent of BP and the Committee, in order to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary

**ARTICLE 11 - RETENTION OF JURISDICTION BY BANKRUPTCY COURT**

**11.1** From the Confirmation Date until entry of a final decree closing the Bankruptcy Cases (pursuant to 11 U.S.C. § 350 and Bankruptcy Rule 3022), the Bankruptcy Court shall retain such jurisdiction as is legally permissible over the Bankruptcy Cases for the following purposes:

(a) to hear and determine any and all objections to the allowance of any Claim or Administrative Expense Claim, or any controversy as to the classification of Claims or any matters that may directly, indirectly, or contingently affect the obligations of the Debtors or Liquidation Trustee to any Creditors, holders of Claims, or other parties in interest;

(b) to hear and determine any and all applications for compensation and reimbursement of expenses by Professionals;

(c) to hear and determine any and all pending motions for the assumption or rejection of executory contracts and unexpired leases, and to fix any Claims resulting therefrom;

(d) to adjudicate through final judgment such contested matters and adversary proceedings as may be pending or subsequently initiated in the Bankruptcy Court, including, but not limited to, Causes of Action brought by the Liquidation Trustee;

(e) to enforce and interpret the provisions of the Plan, the Disclosure Statement Order, the Confirmation Order, and any other order of the Bankruptcy Court in the Bankruptcy Cases;

(f) to issue any injunction or other relief appropriate to implement the intent of the Plan, and to enter such further orders enforcing any injunctions or other relief issued under the Plan or pursuant to the Confirmation Order;

(g) to modify the Plan pursuant to Bankruptcy Code section 1127 and the applicable Bankruptcy Rules;

(h) to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in the Confirmation Order as may be necessary to carry out the purposes and the intent of the Plan;

(i) to interpret and determine such other matters as the Confirmation Order may provide for or as may be authorized under the Bankruptcy Code; and

(j) to enter and implement such orders as may be appropriate if the Confirmation Order is, for any reason, stayed, reversed, revoked, modified or vacated.

## **ARTICLE 12 - MISCELLANEOUS PROVISIONS**

### **12.1 Headings.**

Headings are utilized in this Plan for the convenience of reference only and shall not constitute a part of the Plan for any other purpose.

### **12.2 No Attorneys' Fees.**

No attorneys' fees with respect to any Claim or Interest shall be payable under the Plan, except as expressly specified herein or Allowed by a Final Order.

### **12.3 Notices.**

Except as otherwise specified in the Plan, all notices in connection with the Plan shall be in writing and shall be deemed to have been given when received or, if mailed, five (5) days after the date of mailing. All communications shall be deemed sent if sent to the Debtors at the Liquidation Trustee's notice address identified in the Plan Supplement.

### **12.4 No Discharge.**

The Debtors shall not receive a discharge under the Plan under Bankruptcy Code section 1141(d)(3).

**12.5 Claims In Dollars.**

Any Claims asserted in foreign currencies shall be converted to United States Dollars in accordance with the prevailing exchange rates published by the Wall Street Journal on the Confirmation Date.

**12.6 Binding Effect.**

The rights, benefits, and obligations of any Person named or referred to in the Plan, or whose actions may be required to effectuate the terms of the Plan, shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person (including, but not limited to, any trustee appointed for the Debtors under chapter 7 or 11 of the Bankruptcy Code). The Confirmation Order shall provide that the terms and provisions of the Plan and the Confirmation Order shall survive and remain effective after entry of any order that may be entered converting the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code, and the terms and provisions of the Plan shall continue to be effective in this or any superseding case under the Bankruptcy Code.

Dated: June ~~12~~16, 2020  
New York, New York

By: /s/ Mark Linzenbold  
Mark Linzenbold  
Chief Financial Officer  
Agera Energy LLC

By: /s/ Mark Linzenbold  
Mark Linzenbold  
Chief Financial Officer  
Agera Holdings, LLC

By: /s/ Mark Linzenbold  
Mark Linzenbold  
Chief Financial Officer  
energy.me midwest llc

By: /s/ Mark Linzenbold  
Mark Linzenbold  
Chief Financial Officer  
Aequitas Energy, Inc.

By: /s/ Stephen Gray  
Stephen Gray  
Manager  
Utility Recovery LLC

By: /s/ Stephen Gray  
Stephen Gray  
Manager  
Agera Solutions LLC

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Document 2 ID	iManage://DM_US/DM_US/166381403/37
Description	#166381403v37<DM_US> - Agera - Modified Second Amended Plan
Rendering set	Standard

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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	140
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Moved to	1
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Format changed	0
Total changes	272